

PASHMAN STEIN WALDER HAYDEN

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CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff,
Richard Rivera, LLC

RICHARD RIVERA, LLC

Plaintiff,

v.

ESSEX COUNTY PROSECUTOR'S OFFICE
and LEEANN CUNNINGHAM in her official
capacity as Records Custodian for the Essex
County Prosecutor's Office,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO:

Civil Action

VERIFIED COMPLAINT

Plaintiffs, Richard Rivera, LLC, through its undersigned counsel, Pashman Stein Walder
Hayden, A Professional Corporation, complains against the Defendants as follows:

INTRODUCTION

1. This is an action alleging violations of the New Jersey Open Public Records Act, N.J.S.A. 47: 1A-1 to -13, ("OPRA"), and the common law right of access to public records.

2. Plaintiff filed an OPRA request in early March 2019 for government records and information relating to a police-involved shooting that occurred on January 28, 2019 in the City of Newark. The Essex County Prosecutor's Office is investigating the shooting. The records that Plaintiff sought, which included Use of Force Reports and police videos, would identify the name of the police officer who fatally shot a man during a motor vehicle stop. The officer's

name is statutorily required to be disclosed pursuant to N.J.S.A. 47:1A-3(b).

3. Defendants responded to Plaintiff's OPRA request in mid-March by producing many of the records, but they redacted the name of the officer involved in the shooting. Defendants claimed that the matter was being presented to a Grand Jury and that they would not release the officer's name because there was a serious concern that if his/her name were public, then the officer may no longer agree to voluntarily testify before the Grand Jury. Defendants claimed the matter would be presented to the Grand Jury "within the next two weeks."

4. Although Plaintiff did not feel the delay was justified, Plaintiff nonetheless waited and renewed his OPRA request in early April 2019 after more than two weeks had passed. Defendants again refused to release the officer's name, this time indicating that the matter would be presented to the Grand Jury on April 25, 2019.

5. Plaintiff once again waited and then renewed his OPRA request on April 26, 2019. Defendants again refused to release the officer's name. This time, they said that the Grand Jury was unable to meet, but that it would convene on May 2, 2019 and thereafter it would take two to three weeks to present the case to the Grand Jury.

6. Plaintiff believes there is no basis to delay access to the officer's name, nor the police video recordings for this incident. More than three months have elapsed since this shooting occurred and the public has been deprived of critical information about the incident. The Supreme Court has made it clear that the public's interest in police-involved shootings is substantial and that the public is entitled to learn the identities of the officers involved in the shootings and see the videos from those shootings. The Court held that information and videos of police-involved shootings should be released within a few days after the incident, after statements from observers have been taken. Defendants cannot establish the high bar to

overcome the presumption in favor of access and their actions violate OPRA.

PARTIES

7. Plaintiff Richard Rivera, LLC, a limited liability company in New Jersey.

8. Defendant Essex County Prosecutor's Office (ECPO) is a government entity formed under the laws of the State of New Jersey, with a primary place of business at the Veteran's Courthouse, 50 W Market St # 3, Newark, NJ 07102.

9. Defendant LeeAnn Cunningham is the Custodian of Records for ECPO. She is being sued in her official capacity only and also maintains an office at the Veteran's Courthouse, 50 W Market St # 3, Newark, NJ 07102.

VENUE & JURISDICTION

10. Venue is properly laid in Essex County because Defendant ECPO is located in Essex County and because the cause of action arose in Essex County.

11. This Court has subject matter jurisdiction pursuant to N.J.S.A. 47:1A-6.

FACTUAL ALLEGATIONS

About Plaintiff

12. Plaintiff Richard Rivera, LLC is a company that provides expert witness services and consultations regarding police practices and policies. It is owned by Richard Rivera, a retired municipal police officer, private consultant, civil rights advocate, and expert witness in police practices and policies.

13. On a regular and ongoing basis since 2008, Mr. Rivera volunteers his time and resources to the Latino Leadership Alliance of New Jersey, a community advocacy organization, where he co-chairs the Civil Rights Protection Project. Mr. Rivera monitors civil rights issues, particularly those involving police activity, statewide. He regularly meets with law enforcement

executives and county prosecutors throughout the state regarding current trends in police practices and provides *pro bono* expert advice to them on compiling and analyzing report data to improve accountability and supervision while reducing liability.

14. As a police practices expert consultant, he has reviewed specific actions by police officers, supervisors and policymakers in more than 900 completed internal affairs (“IA”) investigations and disciplinary actions. Over the years, he has reviewed hundreds of employee personnel files. His ongoing research in the law enforcement field includes compiling and analyzing over 1,300 Internal Affairs Annual Summary Reports (“IAASR”) and more than 8,500 Use of Force Reports. He has authored numerous studies, including co-authoring a 2009 report by the ACLU of New Jersey called “*The Crisis Inside Police Internal Affairs.*”

15. Mr. Rivera often provides the records he receives from OPRA requests to the media and is frequently quoted by the state and national media in news stories about police matters. See, e.g., Joe Atmonavage, “*Aggressive Cops Are ‘Out Of Control’ In This N.J. City, Insiders Say, Costing Taxpayers Millions.*” NJ ADVANCE MEDIA (Jan. 8, 2019); Sara Barchenger, “*Ocean County’s Top Cop to Lakewood: Fix Police Internal Affairs.*” ASBURY PARK PRESS (June 5, 2018); Ryan Ross, “*Police Misconduct: Former Cop, Whistleblower Weighs in on NJ’s Internal Affairs Failures.*” ASBURY PARK PRESS (Jan. 19, 2018); Isaac Avilucea, “*Mercer County Assistant Prosecutor Suspended After DWI Arrest,*” THE TRENTONIAN (Sept. 11, 2017); David Hutchinson, “*Police Must Name Officers, Release Video in Fatal Shooting, Judge Rules.*” NJ.COM (Feb.7, 2017); Suzanne Russel, “*Former Cop Looks To Analyze Diahlo Grant Use-Of-Force Reports,*” MYCENTRALNJ.COM (Feb 7 2017).

The Police Shooting

16. On January 28, 2019, Newark police officers attempted to pull over a motor

vehicle. The vehicle, however, sped off and several police vehicles pursued the vehicle for approximately one mile through the City.

17. The media reported that one of the officers observed a handgun in the vehicle and that the officer fired shots at the vehicle at three separate locations. [Attached hereto as **Exhibit A** is a true and accurate copy of a January 29, 2019 news article from NJ.com].

18. The driver, Gregory Griffin, died as a result of the gun shot wounds. The passenger, Andrew J. Dixon, was listed in critical condition.

19. ECPO is investigating the shooting.

The OPRA Requests

20. On March 5, 2019, Plaintiff filed an OPRA request (through counsel) with ECPO seeking the following records:

Background:

In January 2019, a Newark police officer shot and killed Greg Griffin. The police officer has now been suspended:
<https://abc7ny.com/nj-officer-suspended-following-deadly-police-shooting/5157843/>

Records sought:

1. Use of Force Reports for the incident
2. All N.J.S.A. 47:1A-3(b) information, including the name of the officer who shot and killed Griffin
3. Body-worn camera footage
4. Dash camera footage
5. AG Use of Deadly Force Notification Report

[Attached hereto as **Exhibit B** is a true and accurate copy of the March 5, 2019 OPRA request.]

21. On March 6, 2019, ECPO submitted its initial response to Plaintiff's request for N.J.S.A. 47:1A-3(b) in relevant part as follows:

With respect to Item #2, please find attached copies of the ECPO's Press Advisory, Complaint-Warrant and Arrest Report. Please note that the records have been redacted because the ECPO is not releasing the name of the Newark police officer, *at this time*, for the reasons set forth in detail below.

Request for records under OPRA

First, the request for the name of the officer who shot and killed Griffin is denied on the ground that the investigation of the use-of-force incident is still in its infancy; it is not nearly "substantially complete." Consequently, the ECPO has determined that the release of the officer's name would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

Please note that the officer is currently suspended without pay. And as set forth in the attached Press Release, "[t]he investigation is active and ongoing, but the evidence gathered, so far, raises serious questions about the officer's conduct. Consequently, this matter will be presented to a Grand Jury for possible criminal charges," said Acting Essex County Prosecutor Stephens."

Although suspended without pay, the officer has expressed his/her willingness to voluntarily testify before the Grand Jury within the next several weeks. Should the officer's name and other records be released to the public, there is serious concern that the officer may no longer voluntarily agree to testify before the Grand Jury. Thus, release of the officer's name may jeopardize the criminal investigation and spoil a potential statement, which would also be interfering with the Grand Jurors' investigation. After the officer testifies, however, the ECPO will revisit this issue.

N.J.S.A. 47:1A-3(a) exempts from disclosure records that "pertain to an investigation in progress by any public agency" if their examination will be "inimical to the public interest," and the records were not available to the public before the investigation began.

N.J.S.A. 47:1A-3(b) identifies categories of "information concerning a criminal investigation" that "shall be available to the public within 24 hours or as soon as practicable, of a request." The statute requires disclosure of "information as to the identity of the investigating and arresting personnel and agency."

An agency, however, may withhold the identity of the officers under section 3(b), the public safety exception, when disclosure “*will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release.*” Ibid. This exception “shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety.” Ibid.

In North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541 (2017), the Supreme Court of New Jersey ruled that:

[a]s to the integrity of an ongoing investigation, courts must consider the particular reasons for non-disclosure in a given matter. Among a number of relevant factors are the nature of the details to be revealed, how extensive they are, and how they might interfere with the investigation.” Id. at 576

Here, the ECPO has made a particularized showing under section 3(b) that disclosure of the officer’s name would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. N.J.S.A. 47:1A-3(b). Clearly, there is cause for serious concern that if the officer’s name is released this early in the investigation, the officer may not voluntarily testify before the Grand Jury, which the officer has currently expressed his/her willingness to do. Also, the disclosure of the identity of the officer “would be harmful to a bona fide law enforcement purpose.” Id. at 572. The ECPO therefore satisfies the standards set forth in section 3(b), and the request for the officer’s name is denied in part on this basis.

Second, the request is being denied on the separate and independent ground that records of “investigations in progress” are exempt from disclosure as codified in N.J.S.A. 47:1A-3(a). . . .

Third, the request is being denied on the separate and independent ground that the Prosecutor’s criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1. See Kovalcik v. Somerset County Prosecutor’s Office, 206 N.J. 581, 591 (2011) (recognizing that criminal investigatory records are exempt from disclosure under OPRA); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2015).

. . .

And in a recent case pertaining to an incident in which police used deadly force against a suspect, the New Jersey Supreme Court held that dash cam videos (MVR recordings), investigative reports and witness statements are covered by the criminal investigatory records exemption because those items are “not required by law to be made, maintained or kept on file,” and because the actions of the police pertained to an investigation into actual or potential violations of criminal law. See North Jersey Media Group v. Township of Lyndhurst, 229 N.J. 541 (2017). Your request for the officer’s name is thus denied in part for the above reasons.

Fourth, the request is being denied on the separate and independent ground that the OPRA statute excludes disclosure of 21 categories of information “deemed to be confidential.” N.J.S.A. 47:1A-1.1. These categories are excluded to further the legislature’s recognition that “a public agency has the responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” N.J.S.A. 47:1A-1. To the extent the documents requested fall within this category the request is not a proper OPRA request.

Fifth, the request is being denied on the separate and independent ground that OPRA does not require disclosure of certain privileged materials defined as any “inter-agency or intra-agency advisory, consultative, or deliberative material.” See N.J.S.A. 47:1A-1.1. . . .

Sixth, the request is being denied on the separate and independent ground that the “Confidentiality” section of the Attorney General’s Guidelines on “Internal Affairs Policy & Procedures” (Guidelines), declares that “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information” and “shall only be released under . . . limited circumstances.” Guidelines at 11-46. One such limited circumstance permitting disclosure is “for good cause.” *Ibid*.

[Attached hereto as **Exhibit C** is a true and accurate copy of ECPO’s March 6, 2019 Response, with attachments.]

22. ECPO’s response letter also denied access to the officer’s name pursuant to the common law right of access. See Exhibit C.

23. The Press Advisory that ECPO attached to its response advised the public that the matter was going to be presented to a Grand Jury and that video footage of the incident would not be released. See Exhibit C.

24. On March 12, 2019, ECPO responded to the remainder of Plaintiff's OPRA request. ECPO released redacted copies of the Use of Force Reports and AG Use of Deadly Force Notification Report and denied access to the dash camera and body camera videos in their entirety. The March 12 response re-stated the language from the March 6 letter, but added in relevant part:

With respect to Items #3 and #4, although transparency is the utmost importance in police-involved shootings, the ECPO cannot release the officer's name and the BWC and dash-cam videos, at this time, without compromising the integrity of the ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

After the Grand Jury returns its determination, disclosure will no longer present an issue with regard to the investigation's integrity. Consequently, at that time, the ECPO will release unredacted copies of the Use of Force Reports and all dash-cam and BWC videos. Please be advised that the matter will be presented to a Grand Jury for possible criminal charges within the next two weeks.

[Attached hereto as **Exhibit D** is a true and accurate copy of the March 12, 2019 response letter. True and accurate copies of the Use of Force Reports and AG Deadly Notification report are attached hereto as **Exhibits E, F, and G.**]

25. While Plaintiff disagreed that the officer's name and the police videos could be withheld, he nonetheless decided to wait the two weeks for the information.

26. On April 8, 2019, Plaintiff (through counsel) filed a new OPRA request with ECPO, stating:

Please consider this a renewal of Mr. Rivera's prior OPRA request,

seeking un-redacted Use of Force Reports, policy body camera footage, police dash camera footage, and the name of the officer who shot Greg C. Griffin on January 29, 2019. On March 14, you indicated you should be able to produce such information “within the next two weeks.”

[Attached hereto as **Exhibit H** is a true and accurate copy of Plaintiff’s April 8, 2019 OPRA request.]

27. On April 16, 2019, ECPO responded to Plaintiff’s second OPRA request by again stating that it would not release the officer’s name or the videos “at this time.” It indicated that “the matter will be presented to a Grand Jury for possible criminal charges on April 25th, but Director/Assistant Prosecutor Alexander Albu anticipates that it may require more than one day to present.” [Attached hereto as **Exhibit I** is a true and accurate copy of ECPO’s April 16, 2019 response.]

28. On April 26, 2019, Plaintiff (through counsel) wrote: “My client would like an update on this request.” [Attached hereto as **Exhibit J** is a true and accurate copy of Plaintiff’s April 26, 2019 e-mail.]

29. On April 30, 2019, ECPO wrote:

Director/Assistant Prosecutor Alex Albu informed me that an insufficient number of grand jurors showed up last week. He believes that it was due to spring break for most schools.

The matter is now scheduled to start on Thursday, May 2nd. Alex believes it will likely take 2-3 weeks to present.

[Attached hereto as **Exhibit K** is a true and accurate copy of ECPO’s April 30, 2019 response.]

30. It is clear that ECPO has violated OPRA by withholding the names of the police officer involved in this incident, as such information should be available within 24 hours or soon thereafter pursuant to N.J.S.A. 47:1A-3(b). ECPO has not stated a lawful reason to justify non-

disclosure.

31. Moreover, it is clear that ECPO has violated OPRA and the common law by refusing to release the body camera and dash camera recordings as the Supreme Court has ruled that such videos should be released “shortly after the incident” after those who have observed the incident have been interviewed. See North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).

32. Finally, it is clear that ECPO’s position is also not supported by Attorney General Law Enforcement Directive No. 2018-1, which orders police videos of deadly shootings to be released to the public when upon “substantial completion of the *initial investigation*, generally such initial investigation should be concluded within 20 days of the use-of-force event.” (emphasis added). [Attached hereto as **Exhibit L** is a true and accurate copy of AG Directive 2018-1.]

33. ECPO is instead insisting that the *entire* investigation, not the *initial* investigation, must be complete before it will release the officer’s names and videos and that such includes presentation to the Grand Jury. This is not supported by N.J.S.A. 47:1A-3(a) and (b); the Supreme Court’s decision in North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); or Attorney General Law Enforcement Directive No. 2018-1.

34. At the time of this filing, more than three months have passed since the shooting occurred and the public is still left in the dark about this matter of significant public interest. Defendants have thus violated OPRA and undermined transparency in this State.

FIRST COUNT
(Violation of OPRA)

35. Plaintiffs repeat and incorporate by reference the allegations set forth in the

preceding paragraphs as though fully set forth at length herein.

36. Pursuant to N.J.S.A. 47:1A-1, all government records must be “readily accessible” to the citizen of this State unless specifically exempt by law.

37. The records requested by Plaintiffs are government records subject to OPRA because they were “made, maintained or kept on file,” or “received in the course of ... [Defendant’s] official business.” N.J.S.A. 47:1A-1.1.

38. Defendants refused to produce the requested records, despite the fact that they are not subject to any exemption.

39. Moreover, N.J.S.A. 47:1A-3(b) requires disclosure of specific information, including the names of police officers, and Defendants have not stated a lawful basis to deny or delay access to such information.

40. Accordingly, Defendants have violated OPRA by failing to grant Plaintiffs access to the requested records and information.

41. Accordingly, Defendants have violated OPRA by:

- a) Failing to make the records “readily accessible for inspection, copying, or examination,” in violation of N.J.S.A. 47:1A-1;
- b) Failing to disclose nonexempt government records or nonexempt portions of government records, in violation of N.J.S.A. 47:1A-5(g);
- c) Failing to provide N.J.S.A. 47:1A-3(b) information;
- d) Failing to provide a lawful basis for denying access to government records and information in violation of N.J.S.A. 47:1A-5(g);
- e) Failing to base a denial of access upon a bases “authorized by law” in violation of N.J.S.A. 47:1A-6; and

- f) Failing to identify the specific public records responsive to the requests and the specific basis for withholding each of those records, in violation of N.J.S.A. 47:1A-5(g).

WHEREFORE, Plaintiffs demand judgment against Defendants:

- a) Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 et seq. by failing to provide access to the requested records;
- b) Directing Defendants to identify each record responsive to the Plaintiffs' OPRA requests;
- c) Directing Defendants to identify each record withheld from access and the legal justification therefor through preparation of a Vaughn index or other means;
- d) Directing Defendants to grant access and release the requested records with redactions removed and information to Plaintiff forthwith.
- e) Alternatively, if the Court believes that any information may be exempt from public access, Plaintiff respectfully ask the Court to review the records *in camera* and then require Defendants to delete or excise from the records the portion(s) which are exempt from public access and promptly permit access to the remainder of the record;
- f) Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- g) Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- h) For such other relief as the Court may deem just and equitable

COUNT TWO
(Common Law Right of Access)

42. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

43. The public's need for access to these records is greater than Defendants' need for secrecy.

44. Defendants' failure to disclose the requested government records violated Plaintiff's common law right of access.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring said actions of Defendants to be unlawful and invalid;
- (b) Directing Defendants to release the requested records to Plaintiff forthwith;
- (c) Awarding counsel fees and costs; and
- (d) Granting such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Richard Rivera, LLC

Dated: May 2, 2019

By: /s CJ GRIFFIN

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by its attorney, hereby certifies that the matter in controversy is not the subject of any other action pending in any Court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that it has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Richard Rivera, LLC

Dated: May 2, 2019

By: /CJ GRIFFIN

VERIFICATION

Richard Rivera, of full age, deposes and says:

1. I am the owner of Richard Rivera, LLC, the Plaintiff in the foregoing Verified Complaint.

2. I have read the Verified Complaint. The allegations of the Verified Complaint contained are true and I asked my attorney to file the OPRA request on Richard Rivera LLC's behalf. The said Verified Complaint is based on personal knowledge and is made in truth and good faith and without collusion, for the causes set forth herein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Richard Rivera

Dated: May 2, 2019

VERIFICATION

CJ Griffin, of full age, deposes and says:

3. I am Attorney in the State of New Jersey and I represent the Plaintiff in this lawsuit.

4. I have read the Verified Complaint. At Mr. Rivera's request, I personally filed the OPRA request on behalf of Plaintiff and certify that the facts alleged in Paragraphs 22-31 are true and accurate. The attached OPRA request and OPRA response are true and accurate copies of those documents.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s CJ GRIFFIN

EXHIBIT A

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ESSEX

1 dead, 1 in critical condition after being shot by Newark police officer during car chase

Updated Jan 29, 2019;
Posted Jan 29, 2019

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By Taylor Tiamoyo Harris | NJ Advance Media for NJ.com

Essex County Prosecutor's Office announced that a Newark man has died after being shot by a Newark police officer following a car chase on Monday evening.

The driver, Gregory Griffin, 46, died this afternoon at University Hospital, according to a press release from the Essex County Prosecutor's Office. The passenger, Andrew J. Dixon, 35, is currently listed in critical condition.

The men were at Clinton Avenue and Thomas Street around 11:20 p.m. on Monday when Newark police attempted to pull them over, said Katherine Carter, the prosecutor's spokeswoman.

[Learn More](#)

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PRE-K OUR WAY

5/1/2019

1 dead, 1 in critical condition after being shot by Newark police officer during car chase - nj.com

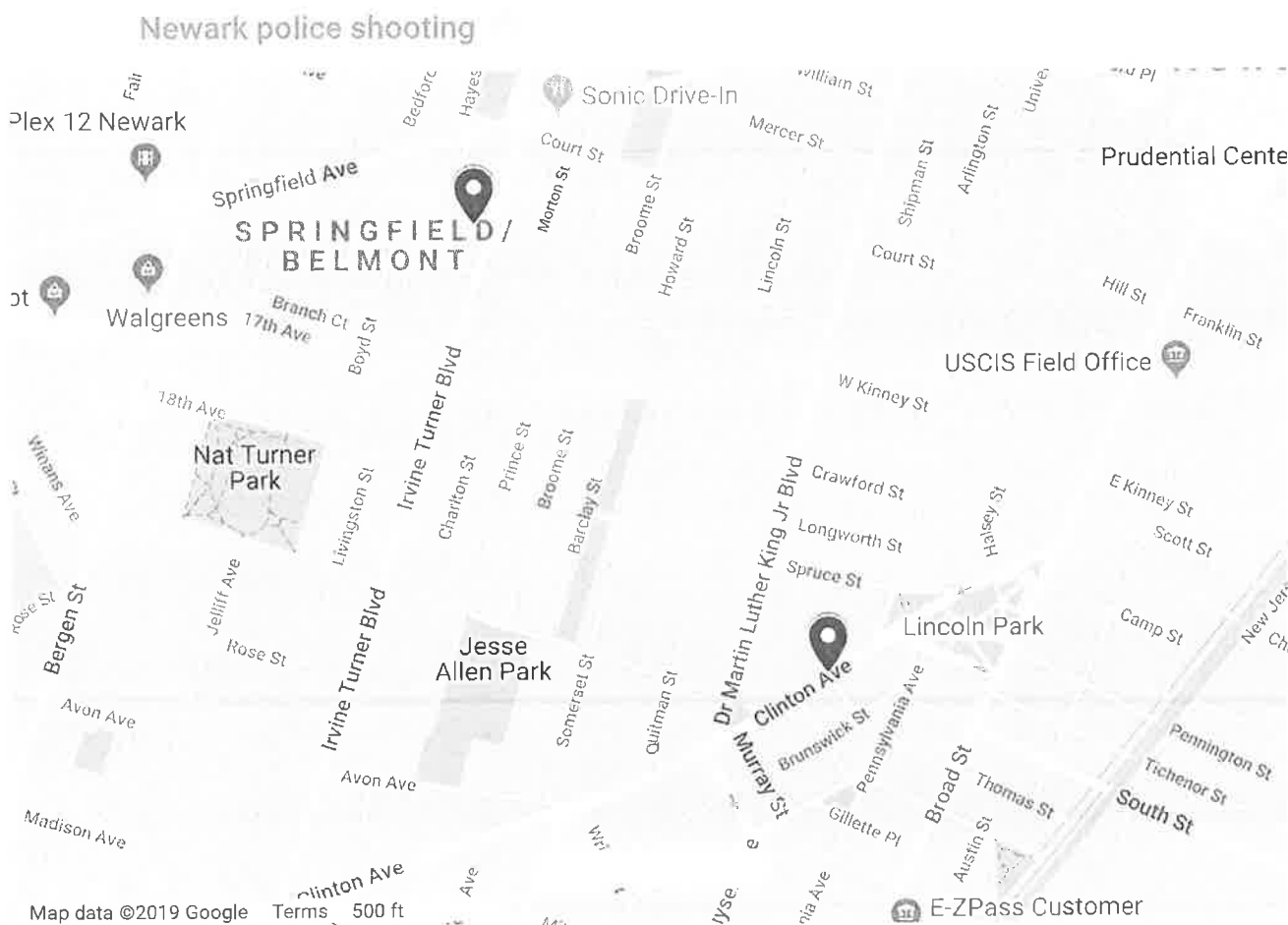
Officers tried to stop the vehicle "in which a handgun was observed," said Catherine Adams, a spokeswoman for the city's Department of Public Safety.

Police began the pursuit after the driver of the vehicle refused to pull over, and shots were fired at the vehicle by an officer at three separate locations, Carter said.

The mile-long pursuit ended in the area of Irvine Turner Boulevard near Kinney Street.

A loaded semi-automatic handgun was found in the suspect's car, prosecutors say.

The investigation by the county prosecutor's office is ongoing. Anyone with information is urged to contact the office's Professional Standards Bureau at 862-520-3700.



Taylor Tiamoyo Harris may be reached at tharris@njadvancemedia.com. Follow her on Twitter [@ladtytiamoyo](https://twitter.com/ladtytiamoyo). Find NJ.com on Facebook.

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EXHIBIT B



ESSEX COUNTY, NJ

OPRA Request #2849

Below is your OPRA request.

Submitted By:

CJ Griffin

Date Submitted:

03/05/2019 10:35 AM

Date Due:

03/14/2019 10:35 AM

Department

Essex County Prosecutor's Office

Method of Payment

No Fee

Preferred Delivery:

Pick-up

Short Description

Police shooting records

Record Request Information

On behalf of Richard Rivera, please produce the following records pursuant to OPRA and the common law right of access:

Background:

In January 2019, a Newark police officer shot and killed Greg Griffin. The police officer has now been suspended:

<https://abc7ny.com/nj-officer-suspended-following-deadly-police-shooting/5157843/>

Records sought:

1. Use of Force Reports for the incident
2. All NJSA 47:1A-3(b) information, including the name of the officer who shot and killed Griffin
3. Body worn camera footage
4. Dash camera footage
5. AG Use of Deadly Force Notification Report

Please produce all records electronically via e-mail and they will be sent to Mr. Rivera.

Work Log

Below is the work log for OPRA request #2849.

Date

Action

03/14/19 09:57

Request status Update from Pending to Closed (OPRA Coordinator)

03/14/19 09:57

Records emailed and uploaded to portal. (OPRA Coordinator)

03/14/19 09:49

AG_NOTIFICATION_REPORT.pdf (/index.php/request/download?download_id=42942) (Essex County Prosecutor's Office)

03/14/19 09:49

USE_OF_FORCE_REPORT_ANDREW_DIXON_redacted_3.11_.2019_.pdf
(/index.php/request/download?download_id=42941) (Essex County Prosecutor's Office)

03/14/19 09:48

USE_OF_FORCE_REPORT_GREG_GRIFFIN_redacted_3.11_.2019_.pdf
(/index.php/request/download?download_id=42940) (Essex County Prosecutor's Office)

03/14/19 09:48

GRIFFIN_CJ_OPRA_RESPONSE_LETTER_3.12_.2019_.pdf (/index.php/request/download?download_id=42939) (Essex County Prosecutor's Office)

03/06/19 11:36

FEB._26_.2019_POLICE_INVOLVED_SHOOTING_REFERRED_TO_GRAND_JURY_.pdf
(/index.php/request/download?download_id=42453) (Essex County Prosecutor's Office)

03/06/19 11:35

DIXON_ANDREW_ARREST_REPORT_redacted.pdf (/index.php/request/download?download_id=42452) (Essex County Prosecutor's Office)

03/06/19 11:34

DIXON_ANDREW_COMPLAINT_redacted.pdf (/index.php/request/download?download_id=42451) (Essex County Prosecutor's Office)

03/06/19 11:34

GRIFFIN_CJ_OPRA_RESPONSE_LETTER_3.6_.2019_.pdf (/index.php/request/download?download_id=42450) (Essex County Prosecutor's Office)

03/05/2019

10:35:12 AM

Request submitted (cgriffin@pashmanstein.com)

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EXHIBIT C

OFFICE OF THE ESSEX COUNTY PROSECUTOR

THEODORE N. STEPHENS, II
ACTING ESSEX COUNTY PROSECUTOR

ESSEX COUNTY VETERANS COURTHOUSE, NEWARK, NEW JERSEY 07102

Tel: (973) 621-4700

Fax: (973) 621-5697



ROMESH C. SUKHDEO
ACTING FIRST ASSISTANT PROSECUTOR

MITCHELL G. McGUIRE III
ACTING CHIEF OF DETECTIVES

March 6, 2019

CJ Griffin
cjgriffin@pashmantein.com

Re: OPRA request #2849

Dear Ms. Griffin:

On March 5, 2019, the Essex County Prosecutor's Office ("ECPO") received your request under the Open Public Records Act (OPRA) and the common law right of access pertaining to a police-involved shooting that resulted in the death of Greg C. Griffin on January 29, 2019. See N.J.S.A. 47:1A-1.1 et seq. Specifically, you have requested the following records:

1. Use of Force Reports for the incident
2. All NJSA 47:1A-3(b) information, including the name of the officer who shot and killed Griffin
3. Body-worn camera footage
4. Dash camera footage
5. AG Use of Deadly Force Notification Report

With respect to Item #2, please find attached copies of the ECPO's Press Advisory, Complaint-Warrant and Arrest Report. Please note that the records have been redacted because the ECPO is not releasing the name of the Newark police officer, *at this time*, for the reasons set forth in detail below.

Request for records under OPRA

First, the request for the name of the officer who shot and killed Griffin is denied on the ground that the investigation of the use-of-force incident is still in its infancy; it is not nearly "substantially complete." Consequently, the ECPO has determined that the release of the officer's name would

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jeopardize and undermine the reliability and effectiveness of this ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

Please note that the officer is currently suspended without pay. And as set forth in the attached Press Release, "[t]he investigation is active and ongoing, but the evidence gathered, so far, raises serious questions about the officer's conduct. Consequently, this matter will be presented to a Grand Jury for possible criminal charges," said Acting Essex County Prosecutor Stephens."

Although suspended without pay, the officer has expressed his/her willingness to voluntarily testify before the Grand Jury within the next several weeks. Should the officer's name and other records be released to the public, there is serious concern that the officer may no longer voluntarily agree to testify before the Grand Jury. Thus, release of the officer's name may jeopardize the criminal investigation and spoil a potential statement, which would also be interfering with the Grand Jurors' investigation. After the officer testifies, however, the ECPO will revisit this issue.

N.J.S.A. 47:1A-3(a) exempts from disclosure records that "pertain to an investigation in progress by any public agency" if their examination will be "inimical to the public interest," and the records were not available to the public before the investigation began.

N.J.S.A. 47:1A-3(b) identifies categories of "information concerning a criminal investigation" that "shall be available to the public within 24 hours or as soon as practicable, of a request." The statute requires disclosure of "information as to the identity of the investigating and arresting personnel and agency."

An agency, however, may withhold the identity of the officers under section 3(b), the public safety exception, when disclosure "will jeopardize the safety of any person or **jeopardize any investigation in progress or may be otherwise inappropriate to release.**" Ibid. (Emphasis added). This exception "shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety." Ibid.

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In North Jersey Media Group, Inc. v. Township of Lyndhurst, et.al., 229 N.J. 541 (2017), the Supreme Court of New Jersey noted that:

[a]s to the integrity of an ongoing investigation, courts must consider the particular reasons for non-disclosure in a given matter. Among a number of relevant factors are the nature of the details to be revealed, how extensive they are, and how they might interfere with an investigation." Id. at 576.

Here, the ECPO has made a particularized showing under section 3(b) that disclosure of the officer's name would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. N.J.S.A. 47:1A-3(b). Clearly, there is cause for serious concern that if the officer's name is released this early in the investigation, the officer may not voluntarily testify before the Grand Jury, which the officer has currently expressed his/her willingness to do. Also, the disclosure of the identity of the officer "would be harmful to a bona fide law enforcement purpose." Id. at 572. The ECPO therefore satisfies the standards set forth in section 3(b), and the request for the officer's name is denied in part on this basis.

Second, the request is being denied on the separate and independent ground that records of "investigations in progress" are exempt from disclosure as codified at N.J.S.A. 47:1A-3(a). The exemption applies to any "record or records . . . [that] pertain to an investigation in progress by any public agency." N.J.S.A. 47:1A-3(a). This definition is broader in scope than the "criminal investigatory record" exemption because it applies to any agency investigation, not only criminal ones. Conversely, it is narrower than the criminal investigatory records exemption because it applies solely to investigations that are ongoing. Accordingly, N.J.S.A. 47:1A-3 applies to criminal investigatory records while the investigation is still in progress.

Third, the request is being denied on the separate and independent ground that the Prosecutor's criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1. See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581, 591 (2011) (recognizing that criminal investigatory records are exempt from disclosure under OPRA); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).

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Criminal investigatory records are defined in OPRA as those records which are not required by law to be made, maintained or kept on file and which are held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1; Parker v. Essex County Prosecutor's Office, GRC Complaint No. 2009-225 (October 2010). Accord Hwang v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-348, and Solloway v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-39. The Government Records Council (GRC) has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko v. Division of Criminal Justice, GRC Complaint No. 2002-79, et seq., holding that "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed or unconfirmed." Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete." See Johnson/Press of Atlantic City v. Division of State Police, GRC Complaint No. 2004-46; Harvey v. Division of State Police, GRC Complaint No. 2004-65. Accord Daily Journal v. Police Department, 351 N.J. Super. 110, 120 (App. Div. 2002), certif. den., 174 N.J. 364 (2002).

And in a recent case pertaining to an incident in which police used deadly force against a suspect, the New Jersey Supreme Court held that dash cam videos (MVR recordings), investigative reports and witness statements are covered by the criminal investigatory records exception because those items are not "required by law to be made, maintained or kept on file," and because the actions of the police pertained to an investigation into actual or potential violations of criminal law. See North Jersey Media Group v. Township of Lyndhurst, 229 N.J. 541 (2017). Your request for the officer's name is thus denied in part for the above reasons.

Fourth, the request is being denied on the separate and independent ground that the OPRA statute excludes disclosure of 21 categories of information "deemed to be confidential." N.J.S.A. 47:1A-1.1. These categories are excluded to further the legislature's recognition that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's

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reasonable expectation of privacy." N.J.S.A. 47:1A-1.1. To the extent that the documents requested fall within this category the request is not a proper OPRA request.

Fifth, the request is being denied on the separate and independent ground that OPRA does not require disclosure of certain privileged materials defined as any "inter-agency or intra-agency advisory, consultative, or deliberative material." See N.J.S.A. 47:1A-1.1. A request under OPRA shall not, therefore, extend to materials which include opinions, deliberative materials, interpretations and advice about agency policies. See Bent v. Township of Stafford Police Department, Custodian of Records, supra, 381 N.J. Super. at 40, citing MAG Ent't, LLC, supra.

Sixth, the request is being denied on the separate and independent ground that the "Confidentiality" section of the Attorney General's Guidelines on "Internal Affairs Policy & Procedures" (Guidelines), declares that "{t}he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information" and "shall only be released under ... limited circumstances." Guidelines at 11-46. One such limited circumstance permitting disclosure is "for good cause." Ibid.

Request for Records under the Common Law Right of Access

Your request also seeks access to records under the common law right of access to public records. A separate analysis is now required since an OPRA exemption does not prevent a citizen from requesting access under common law principles. Bergen County Improvement Auth. v. New Jersey Media Group, Inc., 370 N.J. Super. 504, 516 (App. Div.), certif. den., 182 N.J. 143 (2004). A common law record is one that is made by a public official in the exercise of his or her public function, either because the record was required or directed by law to be made or kept, or because it is filed in a public office. Keddie v. Rutgers, State Univ., 148 N.J. 36, 49 (1997). Three requirements must be met in order to access public records under the common law: (i) the records must be common law public documents; (ii) the person seeking access must establish an interest in the subject matter of the material; and (iii) the citizen's right to access must be balanced against the State's interest in preventing disclosure. See North Jersey Media Group, Inc., v. Dep't of Personnel, 389 N.J. Super. 527, 538 (Law Div. 2006). To be sure, under the common law, public records available for

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inspection include any records made by public officers in the exercise of their functions. They include almost every document recorded, generated, or produced by public officials, whether or not required by law to be made, maintained, or kept on file. O'Shea v. Township of West Milford, 410 N.J. Super. 371, 386-387 (App. Div. 2009), quoting Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 122 (App. Div.), certif. den. 174 N.J. 364 (2002). Indeed, the common law makes a much broader class of documents available than the Open Public Records Act (OPRA), *but on a qualified basis*. Daily Journal, *supra*, 351 N.J. Super. at 122. Accord Bergen County Improv. Auth. v. North Jersey Media Group, Inc., *supra*, 370 N.J. Super. at 504. (emphasis added). See also, Mason v. City of Hoboken, 196 N.J. 51, 67-68 (2008), quoting Keddie v. Rutgers, *supra*, 148 N.J. at 50.

Our Supreme Court has established that a court engaging in the required balancing test may consider the following: (i) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (ii) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (iii) the extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure; (iv) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (v) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (vi) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. O'Shea v. Township of West Milford, *supra*, 410 N.J. Super. at 387.

Thus, "the common-law right of access is not absolute." See Drinker Biddle & Reath LLP, v. New Jersey Department of Law and Public Safety, Division of Law, 421 N.J. Super. 489, 499 (2011) quoting S.N.J. Newspapers, Inc. v. Twp. Of Mt. Laurel, 141 N.J. 56, 72 (1995); see also Home News v. State, Dep't of Health, 144 N.J. 446, 453 (1996). The entity seeking access must prove that its interest in obtaining the information is superior to the government's right to confidentiality. Here, the ECPO's interest in withholding the identity of the officer, *at this time*, far outweighs your client's right to access, because disclosure of his/her name would jeopardize and undermine the reliability and effectiveness of this investigation in progress. See Renna v.

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County of Union, 2013 WL 1953566 (App. Div. 2013). The State therefore grants in part and denies in part your request for documents under OPRA and the common law right of access.

With respect to Items 1, 3, 4 and 5, the Prosecutor's response is due on March 14, 2019.

Finally, if your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Prosecutor's Office and/or the County of Essex, to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,



LeeAnn Cunningham
Assistant Prosecutor/
Special Deputy Attorney General
LeeAnn.Cunningham@njecpo.org

C: Acting Prosecutor Theodore N. Stephens
Deputy Chief Assistant Prosecutor Ahmad Rasool
Director/Assistant Prosecutor Alexander Albu
Katherine Carter, Media Relations
Courtney M. Gaccione, Essex County Counsel
Valentina Palchetti, Essex County OPRA Custodian of Records
Gary S. Lipshutz, Asst. Corporation Counsel, City of Newark



NEWS

OFFICE OF THE COUNTY PROSECUTOR

Essex County Veterans Courthouse
Newark, New Jersey 07102
(973) 621-4700

THEODORE N. STEPHENS, II
ACTING ESSEX COUNTY PROSECUTOR
Contact: Katherine Carter
(973) 621-4021 (Office) (973) 289-9704 (Cell)

FOR IMMEDIATE RELEASE

Feb. 26, 2019

Police Involved Shooting Referred to Grand Jury

Newark -- Acting Essex County Prosecutor Theodore N. Stephens, II, announced today that the police-involved shooting that occurred on Jan. 28, in which a Newark police officer shot and killed one individual and injured another, will be presented to a Grand Jury in accordance with New Jersey Attorney General directives governing these incidents.

“The investigation is active and ongoing, but the evidence gathered, so far, raises serious questions about the officer’s conduct. Consequently, this matter will be presented to a Grand Jury for possible criminal charges,” said Acting Essex County Prosecutor Stephens.

Attorney General Directive (2018-1) requires disclosure of body worn video *within 20 days or upon substantial completion of the investigation*. Although transparency is of the utmost importance in this kind of investigation, our office cannot release the footage at this time without compromising the integrity of the ongoing investigation.

“Serious investigations, as always, have been handled in a thorough and competent manner by this office for many years and the Essex County Prosecutor’s Office is ready, willing and able to represent the public in the interest of justice,” Acting Prosecutor Stephens added.

The shooting occurred on Monday, Jan. 28, at approximately 11:30 pm when a Newark police officer attempted to stop a motor vehicle for erratic driving in the area of Pennsylvania Avenue and Thomas Street. During that stop, it is alleged that the officer saw a handgun. While the officer called for backup, the driver of the vehicle drove away.

A pursuit ensued involving multiple police cars. It is alleged that an officer that joined the pursuit fired multiple gunshots, hitting both the driver and the passenger of the vehicle in the head. The driver ultimately died, while the passenger survived.

The investigation is being conducted by the Essex County Prosecutor's Office Professional Standards Bureau. Anyone with information is asked to contact the Professional Standards Bureau at 862-520-3700.

COMPLAINT - WARRANT

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0714	W	2019	001451	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ANDREW DIXON	
NEWARK MUNICIPAL COURT				ADDRESS: 12 PENNSYLVANIA AVE	
31 GREEN STREET					
NEWARK NJ 07102-0000					
973-733-6520 COUNTY OF: ESSEX				NEWARK NJ 07108-0000	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: C19004963		DEFENDANT INFORMATION	
COMPLAINANT M		PENA		SEX: M EYE COLOR: BROWN DOB: 03/04/1984	
NAME: 22 FRANKLIN ST				DRIVER'S LIC. #.	
ATTN RECORD BUREAU				SOCIAL SECURITY #: xxx-xx-xxxx SBI #: 563576C	
NEWARK NJ 07102				TELEPHONE #:	
				LIVSCAN PCN #: 071418015439	

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 01/28/2019 in **NEWARK CITY**, **ESSEX** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, DEFENDANT DID KNOWINGLY AND PURPOSELY COMMIT THE ACT OF BEING IN POSSESSION OF AN UNLAWFUL HANDGUN FOR UNLAWFUL PURPOSE. IN VIOLATION OF NJS 2C:39-4A(1).

WITHIN THE JURISDICTION OF THIS COURT, DEFENDANT DID KNOWINGLY AND PURPOSELY COMMIT THE ACT OF BEING IN POSSESSION OF PROHIBITED WEAPONS AND DEVICES - HOLLOW NOSE/DUM-DUM. IN VIOLATION OF NJS 2C:39-3F.

in violation of:

Original Charge	1) 2C:39-4A(1)	2) 2C:39-3F(1)	3)
Amended Charge			

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: **M PENA** Date: **01/29/2019**

You will be notified of your **Central First Appearance/CJP** date to be held at the **Superior Court** in the county of **ESSEX** at the following address: **ESSEX COUNTY COURTS**
VETERANS COURTHOUSE **50 WEST MARKET STREET** **NEWARK NJ 07102-0000**
 Date of Arrest: **01/28/2019** Appearance Date: Time: Phone: **973-776-9300**

PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT

☐ Probable cause **IS NOT** found for the issuance of this complaint.

Signature of Court Administrator or Deputy Court Administrator Date Signature of Judge Date

☒ Probable cause **IS** found for the issuance of this complaint. **JUDE NKAMA JUDICIAL OFFICER** **01/29/2019**
 Signature and Title of Judicial Officer Issuing Warrant Date

TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.

Bail Amount Set: by: (if different from judicial officer that issued warrant)

☐ Domestic Violence – Confidential

☐ Related Traffic Tickets or Other Complaints

☒ Serious Personal Injury/ Death Involved

Special conditions of release:

- ☐ No phone, mail or other personal contact w/victim
☐ No possession firearms/weapons
☐ Other (specify):

ORIGINAL

COMPLAINT – WARRANT (Court Action)

COMPLAINT NUMBER

0714**W****2019****001451****STATE V.****ANDREW DIXON****FTA Bail Information**

Date Bail Set: _____

Amount Bail Set: \$ _____

by: _____

☐ Bail Recog. AttachedReleased
on Bail
(v)

R.O.R.

Committed
DefaultCommitted
w/o Bail

Place Committed: _____

Date Referred to

County Prosecutor: _____

Date of First
Appearance:☐ Advised of Rights by _____

Defendant Desires Counsel:

☐ Yes ☐ No**Prosecuting Attorney Information****Defense Counsel Information****Name:****Name:**

State

County

Municipal

Other

None

Retained

Public Def

Assigned

Waived

Other

Original Charge

1) **2C:39-4A(1)**2) **2C:39-3F(1)**

3)

Amended Charge

Waiver Indt/Jury

Plea/Date of Plea

Plea:

Date:

Plea:

Date:

Plea:

Date:

Adjudication (* see code)

Finding
Code:

Date:

Finding
Code:

Date:

Finding
Code:

Date:

Jail Term

Jail time credit

Susp. Imp

Jail time credit

Susp. Imp

Jail time credit

Susp. Imp

Probation Term

Susp. Imp

Susp. Imp

Susp. Imp

Cond. Discharge Term

Community Service

D/L Suspension Term

Fines/Costs

Fines:

Costs:

Fines:

Costs:

Fines:

Costs:

VCCB/SNSF

VCCB:

SNSF:

VCCB:

SNSF:

VCCB:

SNSF:

DEDR/Lab Fee

DEDR:

LAB:

DEDR:

LAB:

DEDR:

LAB:

CD Fee/Drug Ed Fnd

CD:

DAEF:

CD:

DAEF:

CD:

DAEF:

DV Surch/Other Fees

DV: -

Other:

DV:

Other:

DV:

Other:

Restitution

Beneficiary: _____

Miscellaneous Information, Adjournments, Companion Complaints, Co-Defendants, Case Notes:**Related Traffic Tickets and Complaints:***** Finding Codes**

- 1 – Guilty
- 2 – Not Guilty
- 3 – Dismissed – Other
- 4 – Guilty but Merged
- 5 – Dismissed-Rule
- 6 – Dismissed Lack of Prosecution
- 7 – Dismissed – Pros Motion/Vic Req
- 8 – Conditional Discharge
- D – Dismissed- Prosecutor Discretion
- M – Dismissed- Mediation
- P – Dismissed-Plea Agreement
- S – Disposed at Superior
- W – Dismissed-False ID

COMPLAINT - WARRANT (Court Action)

JUDGE'S SIGNATURE _____

DATE _____

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NJ/CDR2 1/1/2017

COMPLAINT - WARRANT

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0714	W	2019	001451	VS.	
<small>COURT CODE</small>	<small>PREFIX</small>	<small>YEAR</small>	<small>SEQUENCE NO.</small>	ANDREW DIXON	
NEWARK MUNICIPAL COURT 31 GREEN STREET NEWARK NJ 07102-0000 973-733-6520 COUNTY OF: ESSEX				ADDRESS: 12 PENNSYLVANIA AVE NEWARK NJ 07108-0000	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: C19004963		DEFENDANT INFORMATION	
COMPLAINANT NAME: M PENA				SEX: M EYE COLOR: BROWN DOB: 03/04/1984 DRIVER'S LIC. #: DL STATE: SOCIAL SECURITY #: xxx-xx- () SBI #: 563576C TELEPHONE #: LIVSCAN PCN #: 071418015439	

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **01/28/2019** in **NEWARK CITY**, **ESSEX** County, NJ did: **WITHIN THE JURISDICTION OF THIS COURT, DEFENDANT DID KNOWINGLY AND PURPOSELY COMMIT THE ACT OF BEING IN POSSESSION OF AN UNLAWFUL HANDGUN FOR UNLAWFUL PURPOSE. IN VIOLATION OF NJS 2C:39-4A(1).**

WITHIN THE JURISDICTION OF THIS COURT, DEFENDANT DID KNOWINGLY AND PURPOSELY COMMIT THE ACT OF BEING IN POSSESSION OF PROHIBITED WEAPONS AND DEVICES - HOLLOW NOSE/DUM-DUM. IN VIOLATION OF NJS 2C:39-3F.

in violation of:

Original Charge	1) 2C:39-4A(1)	2) 2C:39-3F(1)	3)
Amended Charge			

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment
Signed: **M PENA** Date: **01/29/2019**

You will be notified of your **Central First Appearance/CJP** date to be held at the **Superior Court** in the county of **ESSEX**
at the following address: **ESSEX COUNTY COURTS**
VETERANS COURTHOUSE **50 WEST MARKET STREET** **NEWARK NJ 07102-0000**
Date of Arrest: **01/28/2019** Appearance Date: Time: Phone: **973-776-9300**

PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT

☐ Probable cause IS NOT found for the issuance of this complaint.

Signature of Court Administrator or Deputy Court Administrator Date Signature of Judge Date

☒ Probable cause IS found for the issuance of this complaint. **JUDE NKAMA JUDICIAL OFFICER** **01/29/2019**

Signature and Title of Judicial Officer Issuing Warrant Date

TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.

Bail Amount Set: by: (if different from judicial officer that issued warrant)

☐ Domestic Violence – Confidential ☐ Related Traffic Tickets or Other Complaints ☒ Serious Personal Injury/ Death Involved

Special conditions of release:

- ☐ No phone, mail or other personal contact w/victim
☐ No possession firearms/weapons
☐ Other (specify):

COMPLAINT - WARRANT (DEFENDANT'S COPY)

COMMITMENT

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0714	W	2019	001451	VS.	
<small>COURT CODE</small>	<small>PREFIX</small>	<small>YEAR</small>	<small>SEQUENCE NO.</small>	ANDREW DIXON	
NEWARK MUNICIPAL COURT				ADDRESS: 12 PENNSYLVANIA AVE	
31 GREEN STREET					
NEWARK NJ 07102-0000					
973-733-6520 COUNTY OF: ESSEX				NEWARK NJ 07108-0000	
# of CHARGES	CO-DEFTS	POLICE CASE #:		DEFENDANT INFORMATION	
2		C19004963		SEX: M EYE COLOR: BROWN DOB: 03/04/1984	
COMPLAINANT M		PENA		DRIVER'S LIC. #.	
NAME: 22 FRANKLIN ST				DL STATE:	
ATTN RECORD BUREAU				SOCIAL SECURITY #: xxx-xx- [REDACTED] SBI #: 563576C	
NEWARK NJ 07102				TELEPHONE #: ()	
				LIVESCAN PCN #: 071418015439	

To any Law Enforcement Official of New Jersey, You are commanded to transport this defendant to the Warden of this county who is required to keep the defendant in custody until a release or detention decision is made.

Offense	Aux Offense	Drug Code	Degree	Offense Description
1. 2C:39-4A(1)			2	POSS OF WEAPON
2. 2C:39-3F(1)			4	PROHIBITED WEAP
3.				
4.				

Commitment Reason: Criminal Justice Reform

You will be notified of your Central First Appearance/CJP date to be held at the Superior Court in the county of **ESSEX**
 at the following address: **ESSEX COUNTY COURTS**
VETERANS COURTHOUSE 50 WEST MARKET STREET NEWARK NJ 07102-0000

Date of Arrest: 01/28/2019

Phone: 973-776-9300

JUDE NKAMA JUDICIAL OFFICER

01/29/2019

Signature and Title of Judicial Officer Issuing Warrant

Date

COMMITMENT

Affidavit of Probable Cause

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0714	W	2019	001451	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ANDREW DIXON	
NEWARK MUNICIPAL COURT 31 GREEN STREET NEWARK NJ 07102-0000 973-733-6520 COUNTY OF: ESSEX				ADDRESS: 12 PENNSYLVANIA AVE NEWARK NJ 07108-0000	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: C19004963		DEFENDANT INFORMATION	
COMPLAINANT M NAME: 22 FRANKLIN ST ATTN RECORD BUREAU NEWARK NJ 07102				SEX: M EYE COLOR: BROWN DOB: 03/04/1984 DRIVER'S LIC. #. SOCIAL SECURITY #: XXX-XX- SBI #: 563576C TELEPHONE #: () LIVESCAN PCN #: 071418015439	

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:

UNIT 596A (OFFICER V.SANCHEZ) INITIATED A MOTOR VEHICLE STOP AT THOMAS STREET & PENNSYLVANIA AVENUE. THE DISPATCHER ASKED THE OFFICER DID SHE NEED A BACKUP. THE OFFICER RESPONDED THAT SHE OK. I (SERGEANT D. SPENCER) ADVISED THE DISPATCHER THAT I WOULD RESPOND. ANOTHER UNIT ALSO ADVISED THE DISPATCHER THAT THEY WOULD RESPOND. ANOTHER UNIT ALSO ADVISED THE DISPATCHER THAT THEY WOULD RESPOND. WHILE WE WERE RESPONDING, OFFICER V.SANCHEZ SAID : I HAVE A 646, WHICH MEANS A WEAPON, AND SHE SAID I NEED UNITS TO MY LOCATION. NOW UNITS WERE HURRYING TO GET TO HER LOCATION. OFFICER V.SANCHEZ SAID THE VEHICLE IS TAKING OFF, AND I SAW A HAND GUN. BEFORE I COULD GET TO HER LOCATION, THE VEHICLE HAD LEFT. UNIT 588 (OFFICERS [REDACTED] & H. ORTIZ) ALONG WITH OTHER UNITS WERE IN PURSUIT. THE SUSPECT VEHICLE CONTINUED TO ELUDE THE OFFICERS. AS THE SUSPECT VEHICLE GOT TO THE INTERSECTION OF MADISON AVENUE & BERGEN STREET, I WAS INFORMED THE PASSENGER POINTED A GUN AT THE OFFICERS, AND OFFICER [REDACTED] FIRED [REDACTED] SERVICE WEAPON. THE SUSPECT VEHICLE CONTINUED ELUDING THE OFFICERS. AS THE SUSPECT VEHICLE GOT TO THE INTERSECTION OF BERGEN STREET & SPRINGFIELD AVENUE, AGAIN I WAS INFORMED THE PASSENGER POINTED A GUN AT THE OFFICERS AND OFFICER [REDACTED] FIRED [REDACTED] SERVICE WEAPON. THE SUSPECT VEHICLE CONTINUED ELUDING THE OFFICERS. WHEN THE SUSPECT VEHICLE TURNED ONTO IRVINE TURNER BOULEVARD APPROACHING 54 IRVINE TURNER BOULEVARD, AGAIN I WAS INFORMED THE PASSENGER POINTED A GUN AT THE OFFICERS, AND OFFICER [REDACTED] FIRED [REDACTED] SERVICE WEAPON. THE SUSPECT VEHICLE CAME TO A COMPLETE STOP

BOTH OCCUPANTS OF THE SUSPECT VEHICLE WERE STRUCK. THE DRIVER APPEARED TO BE STRUCK IN THE HEAD. AT THE TIME OF THIS REPORT, THE IDENTITY OF THE DRIVER IS UNKNOWN. THE DRIVER WAS UNRESPONSIVE WHEN HE WAS TAKEN OUT OF THE VEHICLE BY LIEUTENANT T.RUANE 9214. THE LIEUTENANT CHECKED FOR A PULSE, AND DID NOT FEEL ONE. THE LIEUTENANT BEGAN TO ADMINISTER CPR TO THE DRIVER UNTIL EMS ARRIVED ON SCENE. THE PASSENGER, WHO WAS IDENTIFIED AS ANDREW DIXON APPEARED TO BE STRUCK IN THE FACIAL AREA. HE WAS SEMI-ALERT WHEN HE WAS TAKEN OUT OF THE VEHICLE. BOT SUSPECTS WERE TAKEN TO RUTGERS HOSPITAL.

BOTH OFFICERS ([REDACTED] & H.ORTIZ) WERE ALSO TAKEN TO RUTGERS HOSPITAL. I TOOK CONTROL OF BOTH [REDACTED] & H.ORTIZ SERVICE WEAPONS AT RUTGERS HOSPITAL. THE POLICE OFFICERS SERVICE WEAPONS WERE TURNED OVER TO CAPTAIN STEVEN ROBERTS AND LIEUTENANT THOMAS SHEEHAN OF THE ESSEX COUNTY PROSECUTOR'S OFFICE.

Affidavit of Probable Cause

Affidavit of Probable Cause

COMPLAINT NUMBER

THE STATE OF NEW JERSEY

0714

W

2019

001451

VS.

ANDREW DIXON

COURT CODE

PREFIX

YEAR

SEQUENCE NO.

2. I am aware of the facts above because: (Included, but not limited to: your observations, statements of eyewitnesses, defendant's admission, etc.)

ONE 45CAL HANDGUN WAS RECOVERED LOADED WITH FIVE HOLLOW POINT BULLETS IN THE VEHICLE.

OWNERSHIP: EBONY J. DAVIS, WHO RESIDES AT 999 BROAD STREET, APT #303, NEWARK NJ 07102.

THE VEHICLE WAS TOWED FOR INVESTIGATION.

3. If victim was injured, provide the extent of the injury:

NO INJURY TO THE VICTIM

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: M PENA LAW ENFORCEMENT OFFICER

Date: 01/29/2019

Affidavit of Probable Cause

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1/1/2017

Preliminary Law Enforcement Incident Report

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. ANDREW DIXON	
0714	W	2019	001451		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
NEWARK MUNICIPAL COURT 31 GREEN STREET NEWARK NJ 07102-0000 973-733-6520 COUNTY OF: ESSEX				ADDRESS: 12 PENNSYLVANIA AVE NEWARK NJ 07108-0000	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: C19004963		DEFENDANT INFORMATION SEX: M EYE COLOR: BROWN DOB: 03/04/1984 DRIVER'S LIC. #. DL STATE: SOCIAL SECURITY #: xxx-xx- [REDACTED] SBI #: 563576C TELEPHONE #: LIVESCAN PCN #: 071418015439	
COMPLAINANT M PENA NAME: 22 FRANKLIN ST ATTN RECORD BUREAU NEWARK NJ 07102					

Purpose: The Preliminary Law Enforcement Incident Report (PLEIR) is intended to document basic information known to the officer at the time of its preparation. It is recognized that additional relevant information will emerge as an investigation continues. The PLEIR shall be in addition to, not in lieu of, any regular police arrest, incident, or investigation reports. Note that the PLEIR is specific to each defendant charged in an investigation.

- Another law enforcement officer(s) personally observed the offense, List the officer(s) and their badge#
[REDACTED]
- The offense/incident was recorded using electronic/surveillance via:
 - Body-Worn Camera
- A weapon was involved in the incident:
 - Handgun
- Physical evidence was seized/recovered:
 - Weapon(s)
- The defendant fled, attempted flight, or resisted arrest.
 - *Motor Vehicle pursuit

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: M PENA LAW ENFORCEMENT OFFICER Date: 01/29/2019

Preliminary Law Enforcement Incident Report

Page 7 of 7

7/20/2018

NEWARK POLICE

ARREST REPORT

1 PRISONER'S LAST NAME DIXON		FIRST MIDDLE ANDREW J		2 TIME AND DATE OF ARREST 03:55 01/29/2019		3 SECTOR 516		4 PRECINCT PREC5		5 DIST COMPLT NO		6 CENT ARREST NO A1900706							
7 PRISONER'S ADDRESS 12 PENNSYLVANIA AVE NEWARK NJ 07102				8 F I R		9 APT		10 ALIASES (OR MAIDEN NAME IF FEMALE)				11 OTHER AGENCY #		12 CENT COMPLT NO C19004963					
13 WHERE ARRESTED 54 IRVINE TURNER BLVD,				14 DATE OF BIRTH 3/4/1984		15 PLACE OF BIRTH FLORIDA		16 AGE 34		17 HEIGHT 5' 9"		18 WEIGHT 170		19 HAIR BLK					
22 RACE B		23 SEX M		24 <input type="checkbox"/> HISPANIC		25 <input type="checkbox"/> MARRIED		26 CLOTHING N/A				27 CDR #1 OR CITY ORDINANCE SUM #. S							
28 SOC SEC NUMBER		29 DRIVERS LICENSE NO		30 STATE NJ		31 VEH REG NO		32 SCHOOL AND GRADE OF JUVENILE											
34 OCCUPATION UNKNOWN		35 NAME OF EMPLOYER OR GOVERNMENT AGENCY N/A				36 SCARS MARKS AND OTHER DESCRIPTIVE DATA N/A								33 CDR #2 WAR# W 2019 001451		37 CDR #3 WAR# W			
37 SPECIFIC OFFENSE I UNLAWFUL POSSESSION OF WEAPON -				STATUTE / ORD NO 2C:39-5B		CLASS		JUDGE		COURT DOCKET NO		DISPOSITION		DATE OF DISPO		FINAL CHARGE			
II PROHIBITED WEAPON -				2C:39-3F															
III																			
IV																			
V																			
38 TIME AND DATE OF OCCURRENCE 1/28/2019 23:17				39 TYPE OF PREMISES STREET				40 PLACE OF OCCURRENCE BERGEN ST/MADISON AVENUE, NEWARK NJ 07108				41 OCCURRED ON PUBLIC HOUSING PROPERTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO							
42 VICTIM OR COMPLAINANT'S NAME UNIT 588				43 VICTIM OR COMPLAINANT'S ADDRESS 480 CLINTON AVENUE, NEWARK NJ 07108				44 COMPLTS TEL NO'S: HOME & BUSINESS 973-733-6000											
EVENT # P19041501				PROPERTY BAG				DOM VIOLENCE RELATED N				45 STRANGER TO STRANGER CRIME <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN				47 CHECK REPORTS			
45 DETAILS OF ARREST THE ABOVE LISTED PERSON IS ARRESTED FOR THE ABOVE LISTED CHARGES, REFER TO DP 1:802. DNA STATUS IN CODIS DATE OF INCIDENT: 01/29.2019 WARRANT NUMBER: W 2019 001451												<input type="checkbox"/> DP 1:802							
												<input type="checkbox"/> DP 1:785							
												<input type="checkbox"/> NJTR - 1							
												<input type="checkbox"/> NP 1:1001							
												<input type="checkbox"/> DP 1:1517							
												<input type="checkbox"/> DP 1:152							
												<input type="checkbox"/> DP 1:152:1							
												<input type="checkbox"/> DP 1:225A							
												<input type="checkbox"/> CDR							
48 OTHER PERSON ARRESTED (NAME)				49 CENT ARREST NO				50 OTHER PERSON ARRESTED (NAME)				51 CENT ARREST NO.							
52 RECORD CHECK BY POLICE AIDE JOHNSON.		53 RESULT OF RECORD <input type="checkbox"/> RECORD <input checked="" type="checkbox"/> NO RECORD		54 IS PRISONER WANTED?		55 IF WANTED BY WHOM?		56 WHO WAS NOTIFIED		57 DET NOTIFIED		58 PARTIES OF JUV NOTIFIED BY		59 INTAKE					
60 JUV RELEASED TO / RELATIONSHIP				61 ADDRESS PERSON RELEASED TO				62 HOME TELEPHONE				63 BUSINESS TELEPHONE				64 JUVENILE DETAINED AT			
65 PRISONER TO BE FINGERPRINTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		66 PRISONER TO BE PHOTOGRAPHED <input type="checkbox"/> YES <input type="checkbox"/> NO		67 PRISONER SEARCHED BY [REDACTED]				68 MONEY IN PRISONER'S POSSESSION				69 RESTRICTIONS <input type="checkbox"/> YES <input type="checkbox"/> NO		70 ICE NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO					
71 SIGNATURE OF ARRESTING OFFICER [REDACTED]				/ COMMAND 5th Prec		/ ID NO [REDACTED]		/ TOUR OF DUTY E3		72 READ CLASSIFIED AND APPROVED BY 6690 LT RUBEL, KIRK									
73 INVESTIGATION ASSIGNED TO				74 INVESTIGATION COMPLETED (SIGNATURE OF INVESTIGATOR)				75 ARRAIGNMENT (DATE)		76 COURT		77 AMOUNT OF BAIL		78 BAIL SFT OR PAROLED BY					
79 SIGNATURE OF PERSON PAROLED TO				80 LIEUTENANT ACCEPTING BAIL OR PAROLING PRISONER				81 COMMITTED IN DEFAULT OF BAIL <input type="checkbox"/> YES <input type="checkbox"/> NO		COMMITTED WITHOUT BAIL <input type="checkbox"/> YES <input type="checkbox"/> NO		DIRECTLY TO ARRAIGNMENT <input type="checkbox"/> YES <input type="checkbox"/> NO							
82 OFFICER IN CHARGE OF PRISONER				83 SENT TO CELL BLOCK BY				84 RECEIVED AT CFI / BLOCK BY		85 TIME AND DATE REC		86 CFI NO							
87 TIME AND DATE TO COURT				OFFICER				88 POSTPONED TO											
89 TIME AND DATE FROM COURT				OFFICER				90 PREVIOUS ARRESTS FOR BAIL DETERMINATION											
91 TIME AND DATE OF JAIL				OFFICER				92 NAME OF ICE AGENT				93 F P NO GAI NO							
94 INDEXED BY		95 MICRO PROCESSED BY		96 RESERVED		97 FINGERPRINTED BY PO CAIN, CLAUD		PHOTOGRAPHED BY		98 S B NO 563576C F B I NO 946790XA9									

EXHIBIT D

OFFICE OF THE ESSEX COUNTY PROSECUTOR

THEODORE N. STEPHENS, II
ACTING ESSEX COUNTY PROSECUTOR

ESSEX COUNTY VETERANS COURTHOUSE, NEWARK, NEW JERSEY 07102

Tel: (973) 621-4700

Fax: (973) 621-5697



ROMESH C. SUKHDEO
ACTING FIRST ASSISTANT PROSECUTOR

MITCHELL G. McGUIRE III
ACTING CHIEF OF DETECTIVES

March 12, 2019

CJ Griffin
cjgriffin@pashmantein.com

Re: OPRA request #2849

Dear Ms. Griffin:

On March 5, 2019, the Essex County Prosecutor's Office ("ECPO") received your request under the Open Public Records Act (OPRA) and the common law right of access, pertaining to a police-involved shooting that resulted in the death of Greg C. Griffin on January 29, 2019. See N.J.S.A. 47:1A-1.1 et seq. Specifically, you requested the following records:

1. Use of Force Reports for the incident
2. All NJSA 47:1A-3(b) information, including the name of the officer who shot and killed Griffin
3. Body-worn camera footage
4. Dash camera footage
5. AG Use of Deadly Force Notification Report

On March 6, 2019, with respect to your request for information to be released within 24 hours pursuant to N.J.S.A. 47:1A-3(b), the ECPO provided you with copies of the ECPO's Press Advisory and redacted copies of the Complaint-Warrant and Arrest Report, for the reasons set forth in my March 6th correspondence.

At this juncture, the ECPO will address the balance of your OPRA request. With respect to Items #1 and 5, please find attached redacted copies of the Use of Force Reports and the AG Use of Deadly Force Notification Report. Please note that the records have been redacted for the reasons set forth in detail below.

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With respect to Items #3 and #4, although transparency is of the utmost importance in police-involved shootings, the ECPO cannot release the officer's name and the BWC and dash-cam videos, *at this time*, without compromising the integrity of the ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

After the Grand Jury returns its determination, disclosure will no longer present an issue with regard to the investigation's integrity. Consequently, at that time, the ECPO will release *unredacted* copies of the Use of Force Reports and all dash-cam and BWC videos. Please be advised that the matter will be presented to a Grand Jury for possible criminal charges within the next two weeks.

Request for records under OPRA

First, the records have been redacted because the investigation of the use-of-force incident is still in its infancy; it is not nearly "substantially complete." Consequently, the ECPO has determined that the release of the officer's name who shot and killed Greg Griffin would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

As previously set forth in my letter dated March 6, 2019, the officer is currently suspended without pay. And as set forth in the ECPO's Press Release, "[t]he investigation is active and ongoing, but the evidence gathered, so far, raises serious questions about the officer's conduct. Consequently, this matter will be presented to a Grand Jury for possible criminal charges," said Acting Essex County Prosecutor Stephens."

Although suspended without pay, the officer has expressed his/her willingness to voluntarily testify before a Grand Jury. Should the officer's name and other records be released to the public, there is serious concern that the officer may no longer voluntarily agree to testify before a Grand Jury. Thus, release of the officer's name may jeopardize the criminal investigation and spoil a potential statement, which would also be interfering with the Grand Jurors' investigation. After the officer testifies, however, the ECPO will release the records.

N.J.S.A. 47:1A-3(a) exempts from disclosure records that "pertain to an investigation in progress by any public agency"

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if their examination will be "inimical to the public interest," and the records were not available to the public before the investigation began.

N.J.S.A. 47:1A-3(b) identifies categories of "information concerning a criminal investigation" that "shall be available to the public within 24 hours or as soon as practicable, of a request." The statute requires disclosure of "information as to the identity of the investigating and arresting personnel and agency."

An agency, however, may withhold the identity of the officers under section 3(b), the public safety exception, when disclosure "will jeopardize the safety of any person or *jeopardize any investigation in progress or may be otherwise inappropriate to release.*" Ibid. (Emphasis added). This exception "shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety." Ibid.

In North Jersey Media Group, Inc. v. Township of Lyndhurst, et.al., 229 N.J. 541 (2017), the Supreme Court of New Jersey noted that:

[a]s to the integrity of an ongoing investigation, courts must consider the particular reasons for non-disclosure in a given matter. Among a number of relevant factors are the nature of the details to be revealed, how extensive they are, and how they might interfere with an investigation." Id. at 576.

Here, the ECPO has made a particularized showing under section 3(b) that disclosure of the officer's name would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. N.J.S.A. 47:1A-3(b). Clearly, there is cause for serious concern that if the officer's name is released this early in the investigation, the officer may not voluntarily testify before a Grand Jury, which the officer has currently expressed his/her willingness to do. Also, the disclosure of the identity of the officer "would be harmful to a bona fide law enforcement purpose." Id. at 572. The ECPO therefore satisfies the standards set forth in section 3(b), and the request for the officer's name is denied in part on this basis.

Second, the requests are being denied on the separate and independent ground that records of "investigations in progress"

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are exempt from disclosure as codified at N.J.S.A. 47:1A-3(a). The exemption applies to any "record or records . . . [that] pertain to an investigation in progress by any public agency." N.J.S.A. 47:1A-3(a). This definition is broader in scope than the "criminal investigatory record" exemption because it applies to any agency investigation, not only criminal ones. Conversely, it is narrower than the criminal investigatory records exemption because it applies solely to investigations that are ongoing. Accordingly, N.J.S.A. 47:1A-3 applies to criminal investigatory records while the investigation is still in progress.

Third, the requests are being denied on the separate and independent ground that the Prosecutor's criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1. See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581, 591 (2011) (recognizing that criminal investigatory records are exempt from disclosure under OPRA); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).

Criminal investigatory records are defined in OPRA as those records which are not required by law to be made, maintained or kept on file and which are held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1; Parker v. Essex County Prosecutor's Office, GRC Complaint No. 2009-225 (October 2010). Accord Hwang v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-348, and Solloway v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-39. The Government Records Council (GRC) has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko v. Division of Criminal Justice, GRC Complaint No. 2002-79, et seq., holding that "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed or unconfirmed." Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete." See Johnson/Press of Atlantic City v. Division of State Police, GRC Complaint No. 2004-46; Harvey v. Division of State Police, GRC Complaint No. 2004-65. Accord Daily Journal v. Police Department, 351 N.J. Super. 110, 120 (App. Div. 2002), certif. den., 174 N.J. 364 (2002).

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And in a recent case pertaining to an incident in which police used deadly force against a suspect, the New Jersey Supreme Court held that dash cam videos (MVR recordings), investigative reports and witness statements are covered by the criminal investigatory records exception because those items are not "required by law to be made, maintained or kept on file," and because the actions of the police pertained to an investigation into actual or potential violations of criminal law. See North Jersey Media Group v. Township of Lyndhurst, 229 N.J. 541 (2017). Thus, under Lyndhurst, BWC and dash-cam footage that records potential criminal offenses are exempt from OPRA. See also, Attorney General Law Enforcement Directive No. 2018-1.

Fourth, the requests are being denied on the separate and independent ground that the OPRA statute excludes disclosure of 21 categories of information "deemed to be confidential." N.J.S.A. 47:1A-1.1. These categories are excluded to further the legislature's recognition that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1.1. To the extent that the records requested fall within this category the request is not a proper OPRA request.

Fifth, the requests are being denied on the separate and independent ground that OPRA does not require disclosure of certain privileged materials defined as any "inter-agency or intra-agency advisory, consultative, or deliberative material." See N.J.S.A. 47:1A-1.1. A request under OPRA shall not, therefore, extend to materials which include opinions, deliberative materials, interpretations and advice about agency policies. See Bent v. Township of Stafford Police Department, Custodian of Records, supra, 381 N.J. Super. at 40, citing MAG Entertainment, LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005).

Sixth, the requests are being denied on the separate and independent ground that the "Confidentiality" section of the Attorney General's Guidelines on "Internal Affairs Policy & Procedures" (Guidelines), declares that "{t}he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information" and "shall only be released under ... limited circumstances." Guidelines at 11-46. One such limited circumstance permitting disclosure is "for good cause." Ibid.

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Request for Records under the Common Law Right of Access

Your request also seeks access to records under the common law right of access to public records. A separate analysis is now required since an OPRA exemption does not prevent a citizen from requesting access under common law principles. Bergen County Improvement Auth. v. New Jersey Media Group, Inc., 370 N.J. Super. 504, 516 (App. Div.), certif. den., 182 N.J. 143 (2004). A common law record is one that is made by a public official in the exercise of his or her public function, either because the record was required or directed by law to be made or kept, or because it is filed in a public office. Keddie v. Rutgers, State Univ., 148 N.J. 36, 49 (1997). Three requirements must be met in order to access public records under the common law: (i) the records must be common law public documents; (ii) the person seeking access must establish an interest in the subject matter of the material; and (iii) the citizen's right to access must be balanced against the State's interest in preventing disclosure. See North Jersey Media Group, Inc. v. Dep't of Personnel, 389 N.J. Super. 527, 538 (Law Div. 2006). To be sure, under the common law, public records available for inspection include any records made by public officers in the exercise of their functions. They include almost every document recorded, generated, or produced by public officials, whether or not required by law to be made, maintained, or kept on file. O'Shea v. Township of West Milford, 410 N.J. Super. 371, 386-387 (App. Div. 2009), quoting Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 122 (App. Div.), certif. den. 174 N.J. 364 (2002). Indeed, the common law makes a much broader class of documents available than the Open Public Records Act (OPRA), but on a qualified basis. Daily Journal, supra, 351 N.J. Super. at 122. Accord Bergen County Improv. Auth. v. North Jersey Media Group, Inc., supra, 370 N.J. Super. at 504. (emphasis added). See also, Mason v. City of Hoboken, 196 N.J. 51, 67-68 (2008), quoting Keddie v. Rutgers, supra, 148 N.J. at 50.

Our Supreme Court has established that a court engaging in the required balancing test may consider the following: (i) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (ii) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (iii) the extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure; (iv) the degree

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to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (v) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (vi) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. O'Shea v. Township of West Milford, supra, 410 N.J. Super. at 387.

Thus, "the common-law right of access is not absolute." See Drinker Biddle & Reath LLP, v. New Jersey Department of Law and Public Safety, Division of Law, 421 N.J. Super. 489, 499 (2011) quoting S.N.J. Newspapers, Inc. v. Twp. Of Mt. Laurel, 141 N.J. 56, 72 (1995); see also Home News v. State, Dep't of Health, 144 N.J. 446, 453 (1996). The entity seeking access must prove that its interest in obtaining the information is superior to the government's right to confidentiality.

Here, the ECPO's interest in withholding the identity of the officer, at *this time*, far outweighs your client's right to access, because disclosure of his/her name would jeopardize and undermine the reliability and effectiveness of this investigation in progress. And the release of BWC and dash-cam videos would risk tainting potential witnesses who have not yet given statements. See Renna v. County of Union, 2013 WL 1953566 (App. Div. 2013). As set forth previously, the ECPO will release the records after the Grand Jury returns its determination. The State therefore grants in part and denies in part your request for records under OPRA and the common law right of access.

Finally, if your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Prosecutor's Office and/or the County of Essex, to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law.

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All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,



LeeAnn Cunningham
Assistant Prosecutor/
Special Deputy Attorney General
LeeAnn.Cunningham@njecpo.org

C: Acting Prosecutor Theodore N. Stephens
Deputy Chief Assistant Prosecutor Ahmad Rasool
Director/Assistant Prosecutor Alexander Albu
Katherine Carter, Media Relations
Courtney M. Gaccione, Essex County Counsel
Valentina Palchetti, Essex County OPRA Custodian of Records

EXHIBIT E

Use of force IOP No: F2019-027 Received: Feb 08, 2019 23:17

Event #: P19041501

Classification/Sub-classification: Use of Force / Serious Level

Type of service being performed at time of incident: Police Action

Reason for use-of-force: Other

Officer assessment of citizen condition: Unknown

Citizen was injured: Yes

Citizen was taken to hospital: Yes

Citizen was charged/arrested in relation to the incident: Yes Officer was injured: Yes

Officer was taken to hospital: Yes

Distance officer was from Involvedcitizen:

Involved citizen: Medium

Involved citizen Height: 5'10" to 6'0"

Involved citizen:

Gregory Griffin

Resistance(s):

Other
Thrt PO w/ Firearm

Injuries/conditions:

Bullet Wound(s)

Charges against citizen in relation to the incident:

Eluding
Unlawful Possession of Weapon

Officers involved:

P/O [REDACTED]

Officer current info:

Department: Chief's Office
Bureau: Support Services
Division: Communications

Snapshot - Officer information at time of incident:

: [REDACTED]

Page: 2

Department: Chief's Office
Bureau: Support Services
Division: Communications
Unit: 911 Call Center/ Tel Rep
Rank/title: P/O
Age: 26 Years of employment: 1 Years with unit: 1
Off duty: Off duty employed:

Use(s) Of Force:

Service Weapon: Effective

Injuries/conditions:

Hypertension

Officer witnesses:**P/O Hector G. Ortiz [10895]****Officer current info:**

Department: Chief's Office
Bureau: Operations
Division: 7th

Summary:

On January 28, 2019 at approximately 2317 hours, Unit# 595A (Police Officer Valerie Sanchez) conducted a motor vehicle stop at the intersection of Thomas Street & Pennsylvania Avenue. During the stop, Officer V. Sanchez said I have a 646, and I need some Units immediately. After speaking, the vehicle took off.

As the Units arrived, a vehicle pursuit began. As the eluding vehicle approached the intersection of Madison Avenue & Bergen Street, the passenger pointed a gun at Unit#588. Officer [REDACTED] fired at the suspects. The vehicle continued eluding the Officers. As the vehicle approached the intersection of Bergen Street & Springfield Avenue, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle again eluded the Officers. As the vehicle turned onto Irvine Turner Blvd., again the passenger pointed his weapon at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle stopped at 54 Irvine Turner Blvd.

Both suspects had been shot. The driver, Greg Griffin was unresponsive as he was taken out of the vehicle. He appeared to have been shot in the head area. The passenger, identified as Andrew Dixon appeared to be shot in the facial area. He was semi-responsive. Both suspects were transported to Rutgers's hospital. The vehicle was towed for investigation.

When/where:

Date/time occurred: Jan 28 2019 23:17

Location of Incident: Thomas Thomas Street & Pennsylvania Ave Newark NJ 07114 Precinct: 5th
County: Essex

Linked files:

F2019-027 (pdf)

P19041501: Constructive Authority
P19041501: Vehicle pursuit
P19041501: Constructive Authority
P19041501: Constructive Authority
P19041501: Constructive Authority
P19041501: Constructive Authority
P19041501: Use of force

Status/assignment information:

Status: Completed Priority: High

Opened: Assigned: Due: Completed: 02/11/2019

Disposition: Completed (UOF, Pursuit)

Unit assigned: A-FIT
Handled at field/unit level: No
Investigator assign: Un-assigned
Supervisor assign: Un-assigned
Source of information: Online

Organizational component(s):

Department: Chief's Office
Bureau: Support Services
Division: Communications
Unit: 911 Call Center/ Tel Rep

BlueTeam chain routings

Feb 08, 2019 16:51: Sent from SGT Derek Spencer [8027] to Rollins, Tawana J. LT [7809]

Instructions:

The use of Force for P/O [REDACTED] against Greg Griffin.

Reviewed by LT Tawana J. Rollins [7809] on Feb 11, 2019 at 00:00

Decision: N/A

Reviewer comment:

Routing was NOT handled in BlueTeam. The incident was forwarded into IAPro by IAPro user DET Barbara Rosario

CC(s) of this routing were sent to the following:

Entered via BlueTeam by: SGT Derek Spencer [8027] on Feb 08, 2019 at 16:20

Newark Police Department Use Of Force Report

Incident Entered By: SGT Derek Spencer

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
2/8/2019	1/28/2019	23:17
Record ID #	Event #	IOP No
39318	P19041501	F2019-027
Date/Time Entered		
2/8/2019 16:20		

Incident Summary

On January 28, 2019 at approximately 2317 hours, Unit# S95A (Police Officer Valerie Sanchez) conducted a motor vehicle stop at the intersection of Thomas Street & Pennsylvania Avenue. During the stop, Officer V. Sanchez said I have a 646, and I need some Units immediately. After speaking, the vehicle took off.

As the Units arrived, a vehicle pursuit began. As the eluding vehicle approached the intersection of Madison Avenue & Bergen Street, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired at the suspects. The vehicle continued eluding the Officers. As the vehicle approached the intersection of Bergen Street & Springfield Avenue, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle again eluded the Officers. As the vehicle turned onto Irvine Turner Blvd., again the passenger pointed his weapon at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle stopped at 54 Irvine Turner Blvd.

Both suspects had been shot. The driver, Greg Griffin was unresponsive as he was taken out of the vehicle. He appeared to have been shot in the head area. The passenger, identified as Andrew Dixon appeared to be shot in the facial area. He was semi-responsive. Both suspects were transported to Rutgers's hospital. The vehicle was towed for investigation.

Incident Location

• Thomas Thomas Street & Pennsylvania Ave, Newark, NJ 07114 • : 5th

Use of Force Specific Information

Reason for Use of Force	Service Being Rendered	
Other	Police Action	
Weather Condition	Lighting Condition	Distance to Citizen
Dry	Night - Lights	
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	Yes
More than 1 Citizen Involved		
Yes		
Citizen's Build	Citizen's Height	
Medium	5'10" to 6'0"	
Officer Assessment of Citizen Condition During Incident		
Unknown		
Officer(s) Injured	Officer(s) Taken to Hospital	
Yes	Yes	

Reporting/Involved Citizen Information

Gregory Griffin

DOB: Race: Black Gender: Male

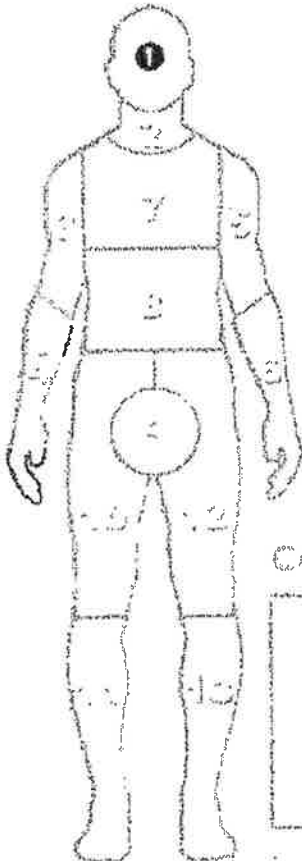
Types of Resistance Citizen Used Against Officer(s)

- Other
- Thrt PO w/ Firearm

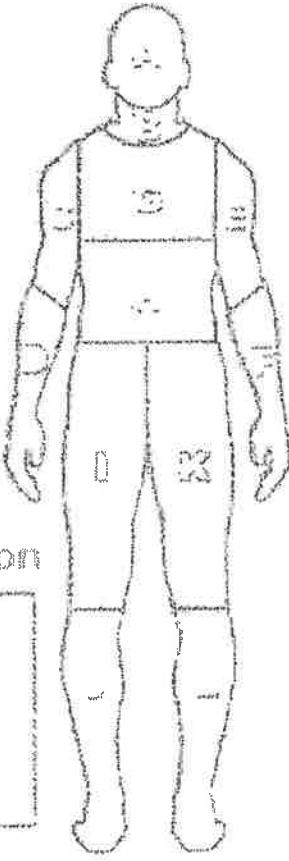
Injuries sustained by this citizen

Injury	Regions	Injury Locations
Bullet Wound(s)	1	1


FRONT



BACK



Condition



Charges against this citizen

- Eluding
- Unlawful Possession of Weapon

Involved Officers

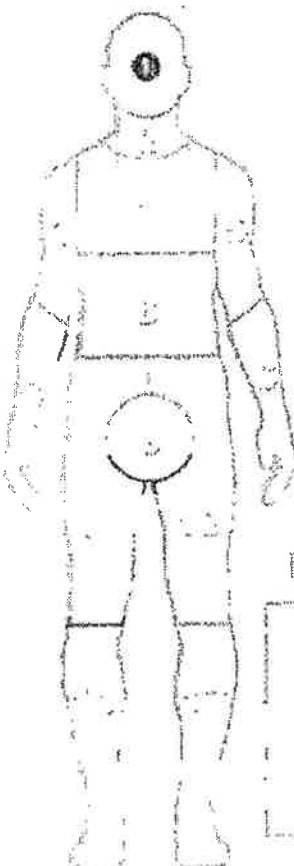
[REDACTED] - [Label Not Set]: [REDACTED]

Force used by this officer against the citizen

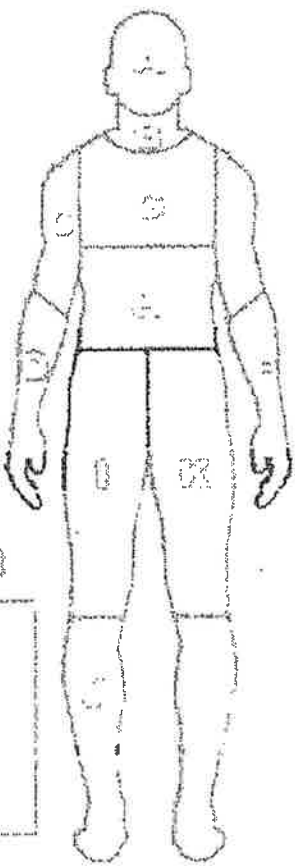
• Service Weapon - Was force effective: Yes

Force Used	Effective?	Regions	Points of contact
Service Weapon	Yes	1	1


FRONT



BACK

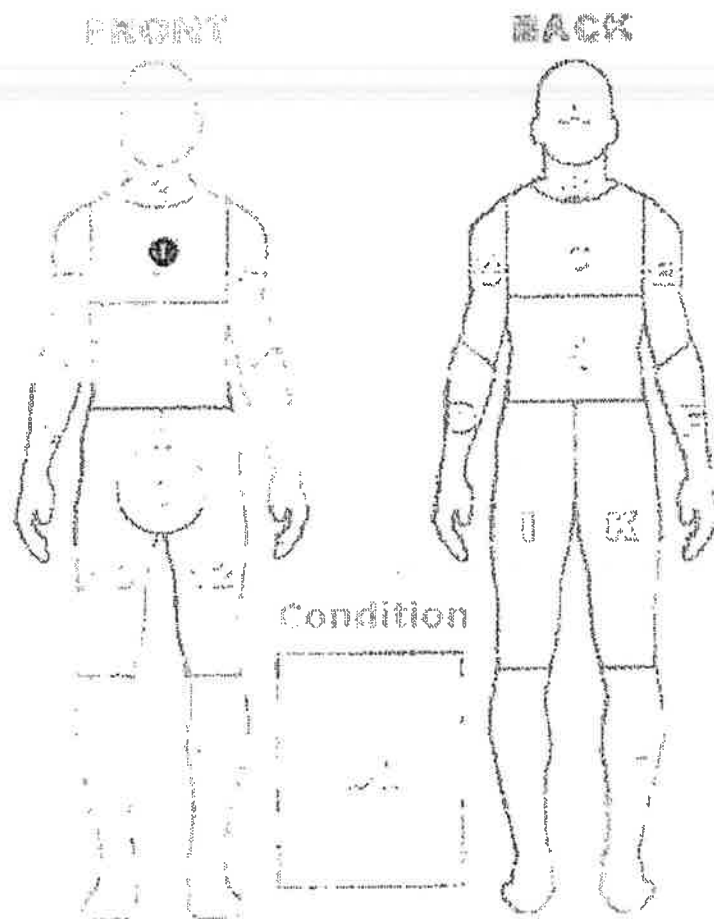


Missed



Injuries sustained by this officer

Injury	Regions	Injury Locations
Hypertension	1	1



Citizen Witnesses

Andrew Dixon

- Race: Black - Gender: Male

Officer Witnesses

P/O Hector Ortiz - [Label Not Set]: 10895

Attachments

No attachments

Chain of Command History

Entering Officer Signature Line

SGT Derek Spencer

EXHIBIT F

Page: 1

Use of force IOP No: F2019-028 Received: Jan 28, 2019 23:17

Event #: P19041501

Classification/Sub-classification: Use of Force / Serious Level

Type of service being performed at time of incident: Police Action

Reason for use-of-force: Other

Officer assessment of citizen condition: Unknown

Citizen was injured: Yes

Citizen was taken to hospital: Yes

Citizen was charged/arrested in relation to the incident: Yes Officer was injured: Yes

Officer was taken to hospital: Yes

Distance officer was from Involvedcitizen:

Involved citizen: Medium

Involved citizen Height: 5'4" to 5'6"

Involved citizen:

Andrew Dixon

Resistance(s):

Thrt PO w/ Firearm

Injuries/conditions:

Bullet Wound(s)

EMS Treated

Charges against citizen in relation to the incident:

Unlawful Possession of Weapon

Officers involved:

P/O [REDACTED]

Officer current info:

Department: Chief's Office

Bureau: Support Services

Division: Communications

Snapshot - Officer information at time of incident:

: [REDACTED]

Department: Chief's Office

Page: 2

Bureau: Support Services
 Division: Communications
 Unit: 911 Call Center/ Tel Rep
 Rank/title: P/O
 Age: 26 Years of employment: 1 Years with unit: 1
 Off duty: No Off duty employed: No

Officer witnesses:**P/O Hector G. Ortiz [10895]****Officer current info:**

Department: Chief's Office
 Bureau: Operations
 Division: 7th

Witnesses:

Gregory Griffin

Summary:

On January 28, 2019 at approximately 2317 hours, Unit# 595A (Police Officer Valerie Sanchez) conducted a motor vehicle stop at the intersection of Thomas Street & Pennsylvania Avenue. During the stop, Officer V. Sanchez said I have a 646, and I need some Units immediately. After speaking, the vehicle took off.

As the Units arrived, a vehicle pursuit began. As the eluding vehicle approached the intersection of Madison Avenue & Bergen Street, the passenger pointed a gun at Unit#588. Officer [REDACTED] fired at the suspects. The vehicle continued eluding the Officers. As the vehicle approached the intersection of Bergen Street & Springfield Avenue, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle again eluded the Officers. As the vehicle turned onto Irvine Turner Blvd., again the passenger pointed his weapon at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle stopped at 54 Irvine Turner Blvd.

Both suspects had been shot. The driver, Greg Griffin was unresponsive as he was taken out of the vehicle. He appeared to be shot in the head area. The passenger, identified as Andrew Dixon appeared to be shot in the facial area. He was semi-responsive. Both suspects were transported to Rutgers's hospital. The vehicle was towed for investigation.

When/where:

Date/time occurred: Jan 28 2019 23:17

Location of Incident: Thomas Thomas Street & Pennsylvania Ave Newark NJ 07114 Precinct: 5th
 County: Essex

Linked files:

F2019-027 (pdf)

P19041501: Constructive Authority
 P19041501: Vehicle pursuit
 P19041501: Constructive Authority

Page: 3

P19041501: Constructive Authority
P19041501: Constructive Authority
P19041501: Constructive Authority
P19041501: Use of force

Status/assignment information:

Status: Completed Priority: High

Opened: Assigned: Due: Completed: 02/11/2019

Disposition: Completed (UOF, Pursuit)

Unit assigned: A-FIT
Handled at field/unit level: No
Investigator assign: SGT Carlos Silva
Supervisor assign: Un-assigned
Source of information: Online

Organizational component(s):

Department: Chief's Office
Bureau: Operations
Division: 5th
Unit: Patrol

BlueTeam chain routings

Feb 08, 2019 17:20: Sent from SGT Derek Spencer [8027] to Rollins, Tawana J. LT [7809]

Instructions:

The use of force for [REDACTED] against Andrew Dixon.

Reviewed by LT Tawana J. Rollins [7809] on Feb 11, 2019 at 00:00

Decision: N/A

Reviewer comment:

Routing was NOT handled in BlueTeam. The incident was forwarded into IAPro by IAPro user DET Barbara Rosario

CC(s) of this routing were sent to the following:

Entered via BlueTeam by: SGT Derek Spencer [8027] on Feb 08, 2019 at 17:11

Newark Police Department Use Of Force Report

Incident Entered By: SGT Derek Spencer

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
2/8/2019	1/28/2019	23:17
Record ID #	Event #	IOP No
39318	P19041501	F2019-027
Date/Time Entered		
2/8/2019 16:20		

Incident Summary

On January 28, 2019 at approximately 2317 hours, Unit# 595A (Police Officer Valerie Sanchez) conducted a motor vehicle stop at the intersection of Thomas Street & Pennsylvania Avenue. During the stop, Officer V. Sanchez said I have a 646, and I need some Units immediately. After speaking, the vehicle took off.

As the Units arrived, a vehicle pursuit began. As the eluding vehicle approached the intersection of Madison Avenue & Bergen Street, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired at the suspects. The vehicle continued eluding the Officers. As the vehicle approached the intersection of Bergen Street & Springfield Avenue, the passenger pointed a gun at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle again eluded the Officers. As the vehicle turned onto Irvine Turner Blvd., again the passenger pointed his weapon at Unit# 588. Officer [REDACTED] fired [REDACTED] weapon at the suspects. The vehicle stopped at 54 Irvine Turner Blvd.

Both suspects had been shot. The driver, Greg Griffin was unresponsive as he was taken out of the vehicle. He appeared to have been shot in the head area. The passenger, identified as Andrew Dixon appeared to be shot in the facial area. He was semi-responsive. Both suspects were transported to Rutgers's hospital. The vehicle was towed for investigation.

Incident Location

- Thomas Thomas Street & Pennsylvania Ave, Newark, NJ 07114 - : 5th

Use of Force Specific Information

Reason for Use of Force	Service Being Rendered	
Other	Police Action	
Weather Condition	Lighting Condition	Distance to Citizen
Dry	Night - Lights	
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	Yes
More than 1 Citizen Involved		
Yes		
Citizen's Build	Citizen's Height	
Medium	5'10" to 6'0"	
Officer Assessment of Citizen Condition During Incident		
Unknown		
Officer(s) Injured	Officer(s) Taken to Hospital	
Yes	Yes	

Reporting/Involved Citizen Information

Gregory Griffin

DOB: Race: Black Gender: Male

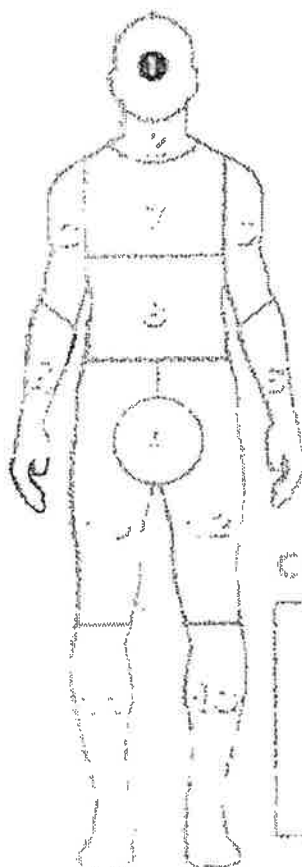
Types of Resistance Citizen Used Against Officer(s)

- Other
- Thrt PO w/ Firearm

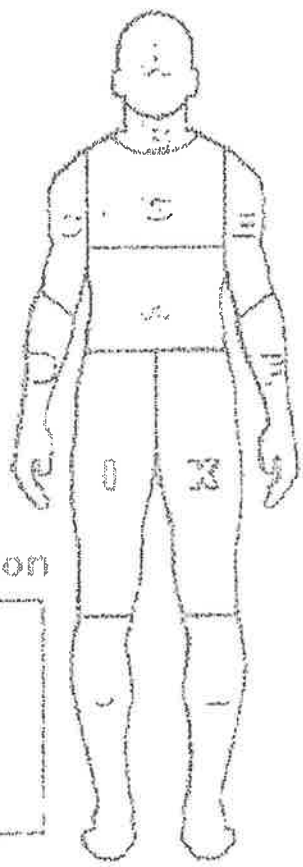
Injuries sustained by this citizen

Injury	Regions	Injury Locations
Bullet Wound(s)		


FRONT



BACK



Condition



Charges against this citizen

- Eluding
- Unlawful Possession of Weapon

Involved Officers

[REDACTED] - [Label Not Set]: [REDACTED]

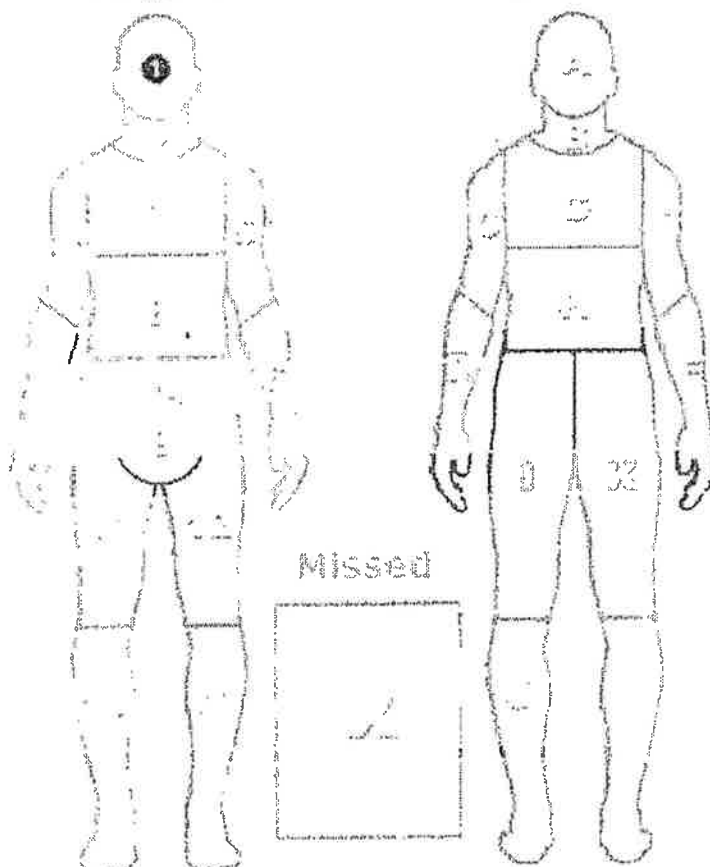
Force used by this officer against the citizen

- Service Weapon - Was force effective: Yes

Force Used	Effective?	Regions	Points of contact
Service Weapon	Yes	1	1

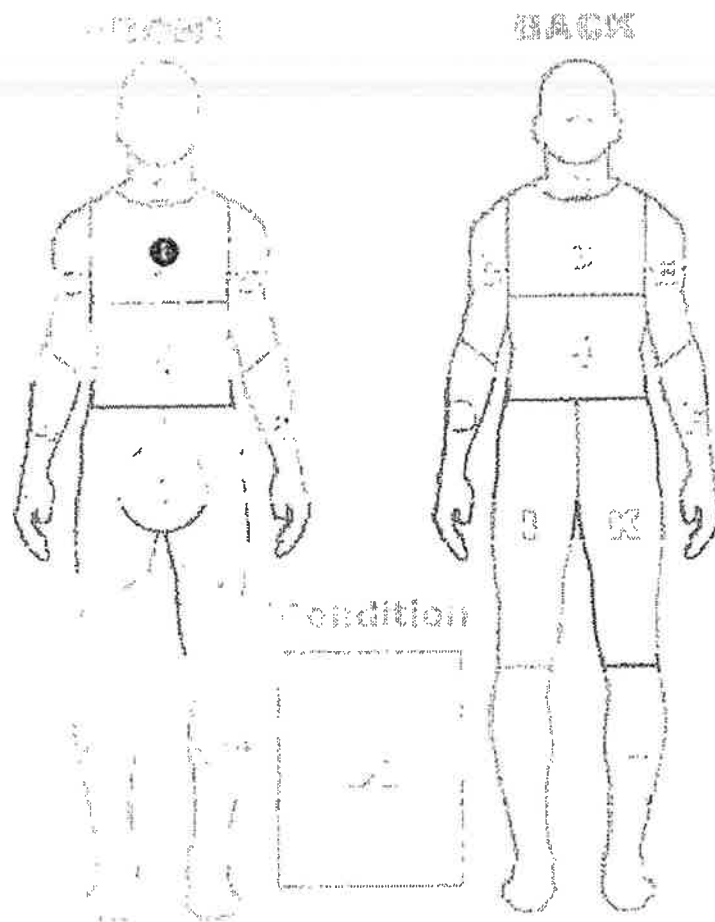
FRONT

BACK



Injuries sustained by this officer

Injury	Regions	Injury Locations
Hypertension	1	



Citizen Witnesses

Andrew Dixon

- Race: Black - Gender: Male

Officer Witnesses

P/O Hector Ortiz - [Label Not Set]: 10895

Attachments

No attachments

Chain of Command History

Entering Officer Signature Line

SGT Derek Spencer

EXHIBIT G

POLICE USE OF DEADLY FORCE – ATTORNEY GENERAL NOTIFICATION REPORT
Immediate notification required pursuant to AG Directive 2006-5

REPORTING AGENCY INFORMATION

- ☐ Atlantic County Prosecutor's Office
- ☐ Bergen County Prosecutor's Office
- ☐ Burlington County Prosecutor's Office
- ☐ Camden County Prosecutor's Office
- ☐ Cape May County Prosecutor's Office
- ☐ Cumberland County Prosecutor's Office
- ☒ Essex County Prosecutor's Office
- ☐ Gloucester County Prosecutor's Office
- ☐ Hudson County Prosecutor's Office
- ☐ Hunterdon County Prosecutor's Office
- ☐ Mercer County Prosecutor's Office

- ☐ Middlesex County Prosecutor's Office
- ☐ Monmouth County Prosecutor's Office
- ☐ Morris County Prosecutor's Office
- ☐ Ocean County Prosecutor's Office
- ☐ Passaic County Prosecutor's Office
- ☐ Salem County Prosecutor's Office
- ☐ Somerset County Prosecutor's Office
- ☐ Sussex County Prosecutor's Office
- ☐ Union County Prosecutor's Office
- ☐ Warren County Prosecutor's Office

Prosecutors Case #: 19-26

Date/Time Reported to AG: 01/29/19 Appx 1 AM

This incident involves (check appropriate box):

- ☐ Shooting Involving Death
- ☒ Shooting Involving Serious Bodily Injury
- ☐ Shooting with No Injury
- ☐ Deadly Force, Other than Firearm, with No Injury
- ☐ Force, Other than Firearm, Involving Death
- ☐ Force, Other than Firearm, w/Serious Injury
- ☐ Conductive Energy Device (CED) (*requires completion of CED Deployment Review Report)
- ☐ Less Lethal Ammunition

Municipal Agency Involved: Newark PD

Municipal Case #: 19-4963

POLICE USE OF DEADLY FORCE – ATTORNEY GENERAL NOTIFICATION REPORTTotal Officers Involved*: 7**POLICE OFFICER(S) INVOLVED**

*Use additional space if necessary.

Newark PD

[REDACTED]
 Hector Ortiz
 Gabriel Lopez
 Edgardo Gonzalez
 Valerie Sanchez
 Christopher Moss
 Ricardo Macieira

*All White/Hispanic & No Injuries

Total Persons Involved*: 2**PERSONS INJURED, KILLED OR INVOLVED**

*Use additional space if necessary.

Person 1:	Gregory Griffin	12/31/72	M	B
	Name (Last, First, MI)	DOB	Sex	Race
Newark		NJ		
	City	State		

Injury Status: ☐ Killed ☒ Injured ☐ No Injury

Description of Injuries:

Shot in head

Person 2:	Andrew Dixon	35 YOA	M	B
	Name (Last, First, MI)	DOB	Sex	Race
Newark		NJ		
	City	State		

Injury Status: ☐ Killed ☒ Injured ☐ No Injury

Description of Injuries: Shot in jaw

POLICE USE OF DEADLY FORCE – ATTORNEY GENERAL NOTIFICATION REPORT**DESCRIPTION OF INCIDENT**

Date and Time of Incident: 11:30 PM

Date and Time Reported to Prosecutor's Office: 11:35 PM

Reported to the Prosecutor's Office by: Essex County Sheriff's Office

Location of Incident or Street Address: Bergen St. & Madison Ave. - Newark, NJ

Brief Summary of Incident:

On January 28, 2019, Newark Unit 595A operated by P/O Valerie Sanchez, effected a motor vehicle stop in the area of Pennsylvania Ave. and Thomas St. Preliminarily, the stop appears to have been for a motor vehicle infraction. Officer Sanchez approached the vehicle, a 2017 Chrysler 300 bearing NJ registration Z21-KUH, which was occupied by two males. While making contact with the driver, the officer observed a handgun in the vehicle and ordered the driver to shut off the vehicle. The driver rolled up the window and drove off from the location. Officer Sanchez radioed that the suspect vehicle fled from her location and broadcasted that the occupants were armed with a handgun.

The suspect vehicle was located by NPD Unit 588 operated by P/O Hector Ortiz (driver) and passenger P/O [REDACTED]. This unit attempted to stop the vehicle which continued to flee. In the area of Bergen St. and Madison Ave., the suspect vehicle stopped due to civilian traffic. At this location, Officer [REDACTED] exited [REDACTED] vehicle and approached the suspect vehicle and discharged [REDACTED] weapon three times. The suspect vehicle then fled north on Bergen.

P/O [REDACTED] returned to [REDACTED] vehicle and the officers continued their pursuit of the suspect vehicle. In the area of Bergen St. and Springfield Ave., the suspect vehicle was again caught in traffic and P/O [REDACTED] again exited [REDACTED] vehicle and engaged the vehicle. [REDACTED] again fired at the suspect vehicle. The suspect vehicle then fled until it came to a stop near 54 Irvine Turner Boulevard where P/O [REDACTED] again approached the vehicle and fired at the vehicle. The suspect vehicle remained at this location. Both suspects sustained gunshot wounds.

EXHIBIT H

CJ Griffin

From: CJ Griffin
Sent: Monday, April 8, 2019 5:12 PM
To: 'LeeAnn Cunningham'
Cc: Valentina Palchetti
Subject: RE: OPRA request #2849

Ms. Cunningham:

Please consider this a renewal of Mr. Rivera's prior OPRA request, seeking un-redacted Use of Force Reports, police body camera footage, police dash camera footage, and the name of the officer who shot Greg C. Griffin on January 29, 2019. On March 14, you indicated you should be able to produce such information "within the next two weeks."

Thank you,

CJ Griffin

Partner
Pashman Stein Walder Hayden, P.C.

201.270.4930 Direct

cgriffin@pashmanstein.com

Court Plaza South, 21 Main St, Suite 200, Hackensack, NJ 07601
201.488.8200 | 201.488.5556 Fax | pashmanstein.com

PashmanStein
WalderHayden
A Professional Corporation

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From: LeeAnn Cunningham <LeeAnn.Cunningham@njecpo.org>
Sent: Thursday, March 14, 2019 9:54 AM
To: CJ Griffin <CGriffin@pashmanstein.com>
Cc: Theodore Stephens <Theodore.Stephens@njecpo.org>; Ahmad Rasool <Ahmad.Rasool@njecpo.org>; Alexander Albu <Alexander.Albu@njecpo.org>; Katherine Carter <Katherine.Carter@njecpo.org>; Courtney M. Gaccione <cgaccione@counsel.essexcountynj.org> <cgaccione@counsel.essexcountynj.org>; Valentina Palchetti <vpalchetti@counsel.essexcountynj.org>
Subject: OPRA request #2849

Good morning Ms. Griffin,

EXHIBIT I

OFFICE OF THE ESSEX COUNTY PROSECUTOR

THEODORE N. STEPHENS, II
ACTING ESSEX COUNTY PROSECUTOR

ESSEX COUNTY VETERANS COURTHOUSE, NEWARK, NEW JERSEY 07102

Tel: (973) 621-4700

Fax: (973) 621-5697



ROMESH C. SUKHDEO
ACTING FIRST ASSISTANT PROSECUTOR

MITCHELL G. McGUIRE III
ACTING CHIEF OF DETECTIVES

April 16, 2019

CJ Griffin, Esq.
cjgriffin@pashmantein.com

Re: OPRA request #3022

Dear Attorney Griffin:

On April 9, 2019, the Essex County Prosecutor's Office ("ECPO") received your second request under the Open Public Records Act (OPRA) and the common law right of access, pertaining to a police-involved shooting that resulted in the death of Greg C. Griffin on January 29, 2019. See N.J.S.A. 47:1A-1.1 et seq. Specifically, you have requested the following records:

1. Unredacted Use of Force Reports
2. Body-worn camera footage
3. Dash-camera footage
4. The name of the officer who shot Greg C. Griffin

As set forth in my previous correspondence dated March 12, 2019, although transparency is of the utmost importance in police-involved shootings, the ECPO cannot release the officer's name and the BWC and dash-cam videos, *at this time*, without compromising the integrity of the ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

Please be advised that the matter will be presented to a Grand Jury for possible criminal charges on April 25th, but Director/Assistant Prosecutor Alexander Albu anticipates that it may require more than one day to present.

CJ Griffin, Esq.
Page 2 of 8
April 16, 2019

After the Grand Jury returns its determination, disclosure will no longer present an issue with regard to the investigation's integrity. Consequently, at that time, the ECPO will release unredacted copies of the Use of Force Reports, all dash-cam and BWC videos and the officer's name who shot Greg C. Griffin.

Request for records under OPRA

First, the ECPO has determined that the release of the officer's name who shot and killed Greg Griffin would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. See N.J.S.A. 47:1A-3(b); Attorney General Law Enforcement Directive No. 2018-1.

As previously set forth in my March 12th letter, although the officer is currently suspended without pay, the officer has expressed his/her willingness to voluntarily testify before a Grand Jury. Should the officer's name and other records be released to the public, there is serious concern that the officer may no longer voluntarily agree to testify before a Grand Jury. Thus, release of the officer's name may jeopardize the criminal investigation and spoil a potential statement, which would also be interfering with the Grand Jurors' investigation. After the officer testifies, however, the ECPO will release the records.

N.J.S.A. 47:1A-3(a) exempts from disclosure records that "pertain to an investigation in progress by any public agency" if their examination will be "inimical to the public interest," and the records were not available to the public before the investigation began.

N.J.S.A. 47:1A-3(b) identifies categories of "information concerning a criminal investigation" that "shall be available to the public within 24 hours or as soon as practicable, of a request." The statute requires disclosure of "information as to the identity of the investigating and arresting personnel and agency."

An agency, however, may withhold the identity of the officers under section 3(b), the public safety exception, when disclosure "will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release." Ibid. (Emphasis added). This exception "shall be narrowly construed to prevent disclosure of

CJ Griffin, Esq.
Page 3 of 8
April 16, 2019

information that would be harmful to a bona fide law enforcement purpose or the public safety." Ibid.

In North Jersey Media Group, Inc. v. Township of Lyndhurst, et.al., 229 N.J. 541 (2017), the Supreme Court of New Jersey noted that:

[a]s to the integrity of an ongoing investigation, courts must consider the particular reasons for non-disclosure in a given matter. Among a number of relevant factors are the nature of the details to be revealed, how extensive they are, and how they might interfere with an investigation." Id. at 576.

Here, the ECPO has made a particularized showing under section 3(b) that disclosure of the officer's name would jeopardize and undermine the reliability and effectiveness of this ongoing investigation. N.J.S.A. 47:1A-3(b). Clearly, there is cause for serious concern that if the officer's name is released this early in the investigation, the officer may not voluntarily testify before a Grand Jury, which the officer has currently expressed his/her willingness to do. Also, the disclosure of the identity of the officer "would be harmful to a bona fide law enforcement purpose." Id. at 572. The ECPO therefore satisfies the standards set forth in section 3(b), and the request for the officer's name is denied in part on this basis.

Second, the requests are being denied on the separate and independent ground that records of "investigations in progress" are exempt from disclosure as codified at N.J.S.A. 47:1A-3(a). The exemption applies to any "record or records . . . [that] pertain to an investigation in progress by any public agency." N.J.S.A. 47:1A-3(a). This definition is broader in scope than the "criminal investigatory record" exemption because it applies to any agency investigation, not only criminal ones. Conversely, it is narrower than the criminal investigatory records exemption because it applies solely to investigations that are ongoing. Accordingly, N.J.S.A. 47:1A-3 applies to criminal investigatory records while the investigation is still in progress.

Third, the requests are being denied on the separate and independent ground that the Prosecutor's criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1. See Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581, 591 (2011) (recognizing that criminal investigatory records are exempt from disclosure

CJ Griffin, Esq.
 Page 4 of 8
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under OPRA); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).

Criminal investigatory records are defined in OPRA as those records which are not required by law to be made, maintained or kept on file and which are held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1; Parker v. Essex County Prosecutor's Office, GRC Complaint No. 2009-225 (October 2010). Accord Hwang v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-348, and Solloway v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-39. The Government Records Council (GRC) has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko v. Division of Criminal Justice, GRC Complaint No. 2002-79, et seq., holding that "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed or unconfirmed." Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete." See Johnson/Press of Atlantic City v. Division of State Police, GRC Complaint No. 2004-46; Harvey v. Division of State Police, GRC Complaint No. 2004-65. Accord Daily Journal v. Police Department, 351 N.J. Super. 110, 120 (App. Div. 2002), certif. den., 174 N.J. 364 (2002).

And in a recent case pertaining to an incident in which police used deadly force against a suspect, the New Jersey Supreme Court held that dash cam videos (MVR recordings), investigative reports and witness statements are covered by the criminal investigatory records exception because those items are not "required by law to be made, maintained or kept on file," and because the actions of the police pertained to an investigation into actual or potential violations of criminal law. See North Jersey Media Group v. Township of Lyndhurst, 229 N.J. 541 (2017). Thus, under Lyndhurst, BWC and dash-cam footage that records potential criminal offenses are exempt from OPRA. See also, Attorney General Law Enforcement Directive No. 2018-1.

Fourth, the requests are being denied on the separate and independent ground that the OPRA statute excludes disclosure of 21 categories of information "deemed to be confidential." N.J.S.A. 47:1A-1.1. These categories are excluded to further the

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legislature's recognition that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1.1. To the extent that the documents requested fall within this category the request is not a proper OPRA request.

Fifth, the requests are being denied on the separate and independent ground that OPRA does not require disclosure of certain privileged materials defined as any "inter-agency or intra-agency advisory, consultative, or deliberative material." See N.J.S.A. 47:1A-1.1. A request under OPRA shall not, therefore, extend to materials which include opinions, deliberative materials, interpretations and advice about agency policies. See Bent v. Township of Stafford Police Department, Custodian of Records, supra, 381 N.J. Super. at 40, citing MAG Entertainment, LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005).

Sixth, the requests are being denied on the separate and independent ground that the "Confidentiality" section of the Attorney General's Guidelines on "Internal Affairs Policy & Procedures" (Guidelines), declares that "{t}he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information" and "shall only be released under ... limited circumstances." Guidelines at 11-46. One such limited circumstance permitting disclosure is "for good cause." Ibid.

Seventh, the requests are being denied on the separate and independent ground that CAD reports detailing information received by or from police dispatchers, log book notations, daily activity logs, daily bulletins, daily statistical sheets, tally sheets, and vehicle logs all fall within the criminal investigatory records exception, because they are "not required by law to be made, maintained or kept on file" and they "pertain[] to any criminal investigation." See N.J.S.A. 47:1A-1.1; North Jersey Media Group, Inc. v. Township of Lyndhurst et al., 441 N.J. Super. 70 (App. Div. 2015).

Request for Records under the Common Law Right of Access

Your request also seeks access to records under the common law right of access to public records. A separate analysis is

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now required since an OPRA exemption does not prevent a citizen from requesting access under common law principles. Bergen County Improvement Auth. v. New Jersey Media Group, Inc., 370 N.J. Super. 504, 516 (App. Div.), certif. den., 182 N.J. 143 (2004). A common law record is one that is made by a public official in the exercise of his or her public function, either because the record was required or directed by law to be made or kept, or because it is filed in a public office. Keddie v. Rutgers, State Univ., 148 N.J. 36, 49 (1997). Three requirements must be met in order to access public records under the common law: (i) the records must be common law public documents; (ii) the person seeking access must establish an interest in the subject matter of the material; and (iii) the citizen's right to access must be balanced against the State's interest in preventing disclosure. See North Jersey Media Group, Inc. v. Dep't of Personnel, 389 N.J. Super. 527, 538 (Law Div. 2006). To be sure, under the common law, public records available for inspection include any records made by public officers in the exercise of their functions. They include almost every document recorded, generated, or produced by public officials, whether or not required by law to be made, maintained, or kept on file. O'Shea v. Township of West Milford, 410 N.J. Super. 371, 386-387 (App. Div. 2009), quoting Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 122 (App. Div.), certif. den. 174 N.J. 364 (2002). Indeed, the common law makes a much broader class of documents available than the Open Public Records Act (OPRA), but on a qualified basis. Daily Journal, supra, 351 N.J. Super. at 122. Accord Bergen County Improv. Auth. v. North Jersey Media Group, Inc., supra, 370 N.J. Super. at 504. (emphasis added). See also, Mason v. City of Hoboken, 196 N.J. 51, 67-68 (2008), quoting Keddie v. Rutgers, supra, 148 N.J. at 50.

Our Supreme Court has established that a court engaging in the required balancing test may consider the following: (i) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (ii) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (iii) the extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure; (iv) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (v) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and

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(vi) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. O'Shea v. Township of West Milford, supra, 410 N.J. Super. at 387.

Thus, "the common-law right of access is not absolute." See Drinker Biddle & Reath LLP, v. New Jersey Department of Law and Public Safety, Division of Law, 421 N.J. Super. 489, 499 (2011) quoting S.N.J. Newspapers, Inc. v. Twp. Of Mt. Laurel, 141 N.J. 56, 72 (1995); see also Home News v. State, Dep't of Health, 144 N.J. 446, 453 (1996). The entity seeking access must prove that its interest in obtaining the information is superior to the government's right to confidentiality.

Here, the ECPO's interest in withholding the identity of the officer, at this time, far outweighs your client's right to access, because disclosure of his/her name would jeopardize and undermine the reliability and effectiveness of this investigation in progress. And the release of the BWC and dash-cam videos would risk tainting potential witnesses who have not yet given statements. See Renna v. County of Union, 2013 WL 1953566 (App. Div. 2013). As set forth previously, the ECPO will release the records after the Grand Jury returns its determination.

Finally, if your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Prosecutor's Office and/or the County of Essex, to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law.

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All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,



LeeAnn Cunningham
Assistant Prosecutor/
Special Deputy Attorney General
LeeAnn.Cunningham@njecpo.org

C: Valentina Palchetti, Essex County OPRA Custodian of Records
Deputy Chief Assistant Prosecutor Ahmad Rasool
Director/Assistant Prosecutor Alexander Albu

EXHIBIT J

CJ Griffin

From: CJ Griffin
Sent: Friday, April 26, 2019 7:36 PM
To: LeeAnn Cunningham
Cc: Valentina Palchetti; Ahmad Rasool; Alexander Albu
Subject: Re: OPRA request #3022

My client would like an update on this request. Thank you.

Sent from my iPhone

On Apr 16, 2019, at 1:32 PM, LeeAnn Cunningham <LeeAnn.Cunningham@njecpo.org> wrote:

Good afternoon Attorney Griffin,

Please find attached my OPRA response letter pertaining to your OPRA request.

Kindly confirm receipt of same.

Regards,

LeeAnn Cunningham

<image001.gif> **LeeAnn Cunningham**
Assistant Prosecutor
Essex County Prosecutor's Office
973.621.4409
leeann.cunningham@njecpo.org

<CJ GRIFFIN OPRA RESPONSE LETTER 4.16.2019.pdf>

EXHIBIT K

CJ Griffin

From: LeeAnn Cunningham <LeeAnn.Cunningham@njecpo.org>
Sent: Tuesday, April 30, 2019 10:21 AM
To: CJ Griffin
Cc: Valentina Palchetti; Ahmad Rasool; Alexander Albu
Subject: RE: OPRA request #3022

Good morning Attorney Griffin,

Director/Assistant Prosecutor Alex Albu informed me that an insufficient number of grand jurors showed up last week. He believes that it was due to spring break for most schools.

The matter is now scheduled to start on Thursday, May 2nd. Alex believes it will likely take 2-3 weeks to present.

Regards,

LeeAnn



LeeAnn Cunningham
Assistant Prosecutor
Essex County Prosecutor's Office
973.621.4409
leeann.cunningham@njecpo.org

From: CJ Griffin [mailto:CGriffin@pashmanstein.com]
Sent: Friday, April 26, 2019 7:36 PM
To: LeeAnn Cunningham <LeeAnn.Cunningham@njecpo.org>
Cc: Valentina Palchetti <vpalchetti@counsel.essexcountynj.org>; Ahmad Rasool <Ahmad.Rasool@njecpo.org>; Alexander Albu <Alexander.Albu@njecpo.org>
Subject: Re: OPRA request #3022

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Good afternoon Attorney Griffin,

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Kindly confirm receipt of same.

Regards,

LeeAnn Cunningham

<image001.gif>LeeAnn Cunningham

EXHIBIT L



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-1

TO: All Law Enforcement Chief Executive Officers

FROM: Gurbir S. Grewal, Attorney General

DATE: February 26, 2018

SUBJECT: **Law Enforcement Directive Concerning Public Release of Video Recordings Depicting Police Deadly Force Incidents**

This Directive instructs that, in any case involving police use of deadly force as defined in Attorney General Directive 2006-5, law enforcement agencies presumptively will make available, upon formal request by the media or other public requestor, video footage captured by body-worn cameras ("BWCs") and patrol vehicle dashboard-mounted cameras ("dash-cams") once the initial investigation of the use-of-force incident is substantially complete. This typically will occur within 20 days of the incident itself. As discussed in Section 3 below, this Directive does not take effect unless and until the Advisory Committee on Professional Conduct advises that such public release comports with applicable Rules of Professional Conduct.

1. BACKGROUND

A. Balancing the Benefits of Transparency Against the Need for Confidentiality

Records generated during a criminal investigation generally are not made available to the public. Increasingly, and with financial and policy support from the Attorney General's Office, police officers in New Jersey are being equipped with BWCs and/or dash-cams that capture investigative activities in real time. Questions have arisen as to whether, when, and to what extent the public will have access to these recordings depicting police activity.

Particular interest is focused on videos of incidents in which police officers use deadly force. Some advocate that such videos are unique and should, for the sake of transparency, be released immediately. In any criminal investigation, however, if video evidence is released before witnesses are interviewed, the public availability of this evidence may taint witnesses' recollections of the incident and compromise the integrity of the investigation – whether that investigation pertains to a law enforcement officer, a civilian, or both. In any context other than the rare instances in which police officers use deadly force, little or no dispute would exist that a grand jury should be able to carry out its important work confidentially, without piecemeal



public release of evidence. In the special case of police uses of lethal force, however, the law enforcement community must take special care to foster public confidence that the incidents will be investigated impartially, thoroughly, and expeditiously. Law enforcement must balance the public's interest in transparency with the interest of the government and of the individuals subject to criminal investigation in fostering a fair criminal investigatory and judicial process.

B. OPRA and the Common Law Right of Access

The starting point for this analysis is the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq.*, pursuant to which the public may request many kinds of government records. OPRA exempts "criminal investigatory records" from disclosure if such records (1) are not required by law to be made, maintained, or kept on file by a law enforcement agency, and (2) pertain to any criminal investigation. In North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017), the Supreme Court agreed with the Appellate Division's finding that, "when an officer turns on a mobile-video recorder to document a traffic stop or pursuit of a suspected criminal violation of law, that recording may pertain to a 'criminal investigation,' albeit in its earliest stages." The Supreme Court held that, under OPRA, the media was not entitled to access to dash-cam video recordings of police officers' high-speed pursuit and subsequent fatal shooting of a civilian, because the recordings were not required by law to be made or maintained and they pertained to a criminal investigation. Thus, under Lyndhurst, BWC and dash-cam footage that records potential criminal offenses are exempt from OPRA.

However, the Court in Lyndhurst ultimately granted access to the dash-cam footage under the common law right of access, a second legal basis under which the public may seek access to government records. Under the common law, once a requestor establishes a cognizable interest in the records requested, courts balance the requestor's interest in disclosure against the government's interest in confidentiality. Courts at all levels have acknowledged that both the government and the public retain a strong interest in criminal investigations being conducted thoroughly and reliably, without the taint of early disclosure of investigative details. Despite that interest, "the public's interest in transparency is heightened when governmental action leads to the death of a civilian." Lyndhurst at 580. Accordingly, the Lyndhurst Court found that the media was entitled to the dash-cam footage under the common law because the public's interest in disclosure of the recordings outweighed the State's interest in preventing disclosure. Such footage could "inform the public's strong interest in a police shooting that killed a civilian . . . without placing potential witnesses and informants at risk," and could be "released without undermining the integrity of an investigation once investigators, shortly after an incident, have interviewed the principal witnesses . . .". *Id.*

This Directive therefore assumes, consistent with the Supreme Court in Lyndhurst, that BWC and dash-cam footage depicting police officers' investigations of crimes — including, but by no means limited to, video showing officers' use of deadly force — falls within OPRA's exemption for criminal investigatory records and therefore could be subject to compelled disclosure, if at all, only pursuant to the common law right of access.

C. Building on Ongoing Initiatives to Improve Police-Community Relations

On July 28, 2015, the then-Acting Attorney General issued a Law Enforcement Directive Regarding Police Body-Worn Cameras and Stored BWC Recordings ("BWC Directive"). The

BWC Directive encourages police departments to equip patrol officers with these electronic recording devices, and establishes uniform statewide standards governing use of BWCs and access to BWC footage. That same day, the then-Acting Attorney General also issued a Supplemental Directive Amending Attorney General Law Enforcement Directive No. 2006-5 ("2015 Independent Prosecutor Directive"). The 2015 Independent Prosecutor Directive ensures that all police uses of deadly force are thoroughly investigated by specialized teams that have no relationship with the subject officers; that all lethal force incidents involving a municipal police officer are investigated by the County Prosecutor, and that the police department employing the subject officer is excluded from the investigation; that all such cases are presented to a grand jury, unless the Attorney General or Director of the Division of Criminal Justice ("Director") determines that the justifiability of force is not in material dispute; that the Attorney General's Office, through the Division of Criminal Justice, supervises and reviews *de novo* the County Prosecutor's investigation and any determination that a case should be closed without grand jury presentation; and that the investigating agency issue a detailed public statement of facts at the conclusion of every case. Both the BWC Directive and the 2015 Independent Prosecutor Directive embrace a common overarching theme: for law enforcement agencies to fulfill their core mission, they must earn and retain the trust, respect, and support of the communities they protect and serve.

Police BWCs raise special privacy concerns. BWCs will capture images of crime victims in the moments after they have been victimized, and images of witnesses to those crimes. BWCs will capture images of the interior of private residences. They will capture images of police incident-response tactics and communications protocols, the release of which could put officers and members of the public in danger. We recognize, however, that where police video equipment records an event of extraordinary public significance, the common-law balancing test may tip in favor of disclosure at some point. Recordings of officers' use of deadly force may be one such category of video where, at least in some cases, courts may compel disclosure under the common law, finding that the public has a strong interest in ensuring that police deadly force is used appropriately and that investigations are conducted transparently and fairly.

Accordingly, pursuant to my authority under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, I hereby DIRECT all law enforcement agencies and officers to implement and comply with the following procedures, standards, and practices concerning the public disclosure of police deadly-force BWC and dash-cam recordings.

2. GUIDANCE TO LAW ENFORCEMENT

A. General Rule: Presumptive Disclosure Upon Substantial Completion of Initial Investigation

When an investigation is conducted pursuant to Attorney General Law Enforcement Directive No. 2006-5 and/or the 2015 Independent Prosecutor Directive, it shall be the responsibility of the Director or the County Prosecutor to determine on a case-by-case basis whether and when a deadly-force recording will be made publicly available.¹ Unless the

¹ This Directive applies to all force incidents as defined in Paragraph 1 of Directive 2006-5, specifically: "[A]ny use of force by a law enforcement officer involving death or serious bodily

Director, or the County Prosecutor with the Director's express approval, finds specific and compelling reasons to delay public disclosure of a deadly-force recording, such recording shall be issued publicly (1) upon substantial completion of the initial investigation and (2) upon formal request by a member of the public or media (pursuant to the common law right of access).²

It shall be within the discretion of the Director or County Prosecutor to determine precisely when the initial investigation is substantially complete. Typically, this will occur after principal, material eyewitnesses to a use-of-force event have been interviewed and after physical and documentary evidence most relevant to the actual use of force has been gathered. This does not, however, mean that the entire investigation must be substantially complete before disclosure of a deadly-force recording.

While it is impossible to place precise temporal parameters on substantial completion of the initial investigation, generally such initial investigation should be concluded within 20 days of the use-of-force event. The initial investigation may in some cases be substantially complete before 20 days after the event. In such cases, the Director or County Prosecutor may, in his or her discretion, authorize release of the deadly-force recording sooner than 20 days after the incident occurred.

Conversely, in some cases, it may take more than 20 days to substantially complete the initial investigation. In such cases, the Director or County Prosecutor may decline to authorize release of a deadly-force recording until such initial investigation is substantially complete. The Director or County Prosecutor must document the reasons that additional time is necessary, and an estimate of when substantial completion will be achieved. Such documentation must be submitted for approval to the Attorney General or designee. The written memorialization of reasons is confidential and privileged attorney work product. Appropriate reasons for an extension beyond the 20-day period include but are not limited to: the need to review and/or redact videos to protect the privacy of victims or other persons depicted; and the need to complete interviews with principal eyewitnesses or to complete other essential aspects of initial investigation.

B. Consultation With Persons Depicted In a Recording or Their Families

Before releasing a deadly-force recording, the Director or County Prosecutor should consult with persons appearing in the recording (not including bystanders or people appearing only in the background) or, in the case of decedents, with their families. For example, if a video

injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm by a law enforcement officer."

² As the Lyndhurst Court held, video footage of police lethal force incidents is not subject to OPRA because it falls within the "criminal investigatory records" exemption. However, as the Lyndhurst Court also opined, the common law right of access stands on different footing, and may (depending on the circumstances of a given case) weigh in favor of public disclosure. In all cases, the media or a member of the public must formally request access to trigger the potential release of lethal-force video footage by the County Prosecutor or Director, upon substantial completion of the initial investigation.

tends to show that a decedent acted with the intent to cause police officers to end that decedent's life, the decedent's family members may prefer that the video not be released. Prosecutors may and should take those wishes into account in deciding how to proceed. Although this Directive permits the Director or County Prosecutor to authorize digital obscuring of civilians or of police officers who use deadly force, Prosecutors may take into account objections from affected persons, including law enforcement officers, that such steps will not adequately protect them. Where public release of a video would unduly compromise the safety or privacy of any person, including a law enforcement officer, the Prosecutor may seek approval from the Attorney General or a designee not to release the recordings, or to release at a later date.

C. Editing Disclosed Copies of Deadly-Force Recording to Protect Privacy Rights

As necessary and within the discretion of the Director or County Prosecutor, the copy of any deadly-force recording publicly released pursuant to this Directive may be digitally modified to obscure the identity of any person, including (but not limited to) any law enforcement officer who is the subject of a criminal investigation, unless the identity of such person or officer already has been officially disclosed or confirmed. The editing shall be done in a way that does not conceal any actions by any person constituting the use of force. Further, and as made clear in the 2015 Independent Prosecutor Directive, under no circumstances may any person alter in any manner the master copy of any recording.

D. Notification to County Prosecutors and Attorney General

Law enforcement officials who receive OPRA or common-law requests for BWC or dash-camera videos must, per existing policies (including the BWC Directive at Section 11.1), notify the County Prosecutor or Director of such requests within one business day of receipt. In cases involving requests for disclosure of police deadly-force recordings, the County Prosecutor (or the State Police, if it receives such a request) shall notify the Attorney General, the Director, or a designee within 24 hours of receiving the request.

3. **ETHICAL CONSIDERATIONS AND EFFECTIVE DATE**

New Jersey Rule of Professional Conduct 3.6 prohibits an attorney from "mak[ing] an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule of Professional Conduct 3.8(f) provides that a prosecutor must "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused." In its March 16, 1989 notice to the bar concerning extrajudicial statements, the Supreme Court noted that "the public production of any physical evidence" is "inappropriate." And in a February 17, 2017 opinion, the Advisory Committee on Professional Ethics ("Advisory Committee") held that "extrajudicial statements featuring displays of seized drugs, weapons, or other contraband do not accord with the Rules of Professional Conduct 3.6 and 3.8 and are not permitted." (Op. at 1).

Public release by prosecutors of BWC or dash-cam footage of police lethal-force incidents upon substantial conclusion of the initial investigation implicates similar but not identical ethical concerns as public display of seized contraband. Every police lethal force case will result in a criminal investigation – of the involved police officer, of a civilian, or in some instances, both. By releasing video footage upon substantial completion of the initial

investigation, the prosecutor will make public evidence that relates to a criminal case that has not yet been tried or, in most instances, charged.

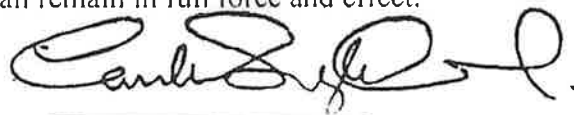
To ensure that prosecutors stay well within the bounds of ethical conduct, my Office has submitted a request to the Advisory Committee seeking clarification on whether the public release of lethal-force recordings upon substantial completion of the initial investigation complies with applicable Rules of Professional Conduct. In that submission, my Office argues that such a public release does not conflict with any Rule of Professional Conduct. It is impossible to know in advance, of course, how the Advisory Committee will rule on this request. Therefore, this Directive does not take effect unless and until the Advisory Committee advises that such public release comports with all applicable Rules of Professional Conduct.

4. PRESERVATION OF PRIVILEGE TO MAINTAIN CONFIDENTIALITY AND NON-ENFORCEABILITY BY THIRD PARTIES

This Directive is issued pursuant to the Attorney General's constitutional and statutory authority to ensure the uniform and efficient enforcement of criminal justice throughout the State. Neither this Directive, nor the release of any recording pursuant to this Directive, shall constitute a waiver of any privilege to maintain the confidentiality of a record that a law enforcement agency may have under OPRA, any other statute, or the common law right of access. This Directive does not create any new requirement that any record be made, maintained or kept. Nothing in this Directive shall be construed to create any promises or any rights beyond those established under the Constitution, statutes, regulations, and decisional law of New Jersey. This Directive is to be implemented by the Division of Criminal Justice and County Prosecutors, and creates no promises or rights that other persons or entities may enforce.

5. SUPERSEDURE

Any provision of the BWC Directive or the 2015 Independent Prosecutor Directive that is inconsistent with any provision of this Directive is hereby superseded to the extent of such inconsistency. All provisions of the BWC Directive and the 2015 Independent Prosecutor Directive that are not inconsistent with this Directive shall remain in full force and effect.



Gurbir S. Grewal
Attorney General

ATTEST:



Elie Honig
Director, Division of Criminal Justice
Dated: February 26, 2018